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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 172

ERIC G. KAUFMAN AND AENNI C. KAUFMAN,
PETITIONERS,

vs.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A. ETC. ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JULY 3, 1951.
CERTIORARI GRANTED OCTOBER 15, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

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SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A. ETC. ET AL.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A. (also known as INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A. G.); and formerly named INTERNATIONALE GESELLSCHAFT FUR CHEMISCHE UNTERNEHMUNGEN A. G. (I. G. CHEMIE) and SOCIETE INTERNATIONALE POUR ENTREPRISES CHIMIQUES S. A. (I. G. CHEMIE),
A corporation,
Address: Basle, Switzerland,
Plaintiff,

v.

TOM C. CLARK,
Attorney General of the United States,
as Successor to the Alien Property Custodian,
Address: Department of Justice, and
WILLIAM A. JULIAN,
Treasurer of the United States,
Address: Treasury Department,
Defendants.

Civil Action No. 4360-'48

Filed Oct. 21, 1948

Complaint for Return of Seized Property

FIRST COUNT

1. This action arises under the Fifth Amendment to the Constitution of the United States and the Trading with the Enemy Act of October 6, 1917, as amended, (U. S. C. Title

50, Appendix, Sections 1 to 38, inclusive). Both defendants are particularly sued under Section 9(a) of said Act and are required to retain the property or money sought herein pending the outcome of this action.

2. Plaintiff is a corporation organized under the laws of the Confederation of Switzerland, has its principal office at Basle, Switzerland, and is and always has been a citizen of Switzerland. Its name has been changed from Internationale Gesellschaft für Chemische Unternehmungen A. G., (I. G. Chemie) and Societe Internationale pour Entreprises Chimiques S. A. (I. G. Chemie) to Societe Internationale pour Participations Industrielles et Commerciales S. A. and Internationale Industrie- & Handelsbeteiligungen A. G.; and it is now commonly sometimes called "INTERHANDEL".

3. Plaintiff is not, nor at any of the times herein specified or material hereto has been, an enemy or ally of enemy of the United States within the meaning of such terms under the said Trading with the Enemy Act, nor a national of a designated enemy country within the meaning of any law, executive or vesting order or governmental regulation.

4. On and prior to February 16, 1942, and continuously thereafter, plaintiff was and is the owner of 2,050,000 shares of the Common B stock, and 455,448 shares of the Common A stock, of *General Aniline & Film Corporation*, of a value in excess of One Hundred Million Dollars ($100,000,000).

5. On February 16, 1942, the Hon. Henry Morgenthau, Jr., as Secretary of the Treasury, issued a certain Vesting Order whereby he illegally seized the aforesaid shares of stock and vested the same in himself as such Secretary; that thereafter, on, to-wit, April 24, 1942, the Hon. Leo T. Crowley, then Alien Property Custodian and one of the predecessors of the defendant Clark in this action, issued his Vesting Order No. 5, whereby he illegally vested the same shares in himself as such Alien Property Custodian; that on the same date, to-wit, April 24, 1942, the said Secretary of the Treasury, at the request of the then Alien Prop-

erty Custodian, delivered, transferred and assigned said shares to the said then Alien Property Custodian.

6. That effective on, to-wit, October 15, 1946, by
54 Executive Order No. 9788, the Office of Alien Property Custodian was terminated, and all authority, rights, privileges, powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be administered by him, and all property and interests vested in and transferred to the Alien Property Custodian, or seized by him, and all proceeds thereof, were transferred to the Attorney General; and that, pursuant to said Executive Order, said shares are now in the possession of one of the defendants in this action, namely, Hon. Tom C. Clark, Attorney General of the United States, as the successor to the Alien Property Custodian, but they are held illegally by him.

7. That said shares of stock were seized and vested and are being held without warrant of law and in violation of the Constitution of the United States, and without the consent of the plaintiff.

8. On or about February 1, 1943, and also on or about June 2, 1948, plaintiff duly filed with the defendant Clark Notices of Claim under oath, with respect to the aforesaid shares of stock, in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

9. Defendant Clark is retaining the aforesaid shares of stock, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and they should be returned to the plaintiff as the sole owner thereof.

10. The defendant, William A. Julian, Treasurer of the United States, is sued as a defendant in this Count by virtue of the provisions of Section 9(a) of the said Trading with the Enemy Act, because cash dividends which have been received by the defendant Clark and his predecessor Cus-

todians upon the shares of stock described herein are on deposit with and in the possession of the defendant Julian in an account in the United States Treasury in the name of the defendant Clark, and are wrongfully and illegally held by the said defendant Julian.

WHEREFORE, plaintiff demands:

(1) Judgment, that it is entitled to the return and immediate possession of the shares of stock described in the 4th paragraph hereof.

(2) Judgment that the defendants, respectively, account for and deliver and transfer said shares of stock to the plaintiff, together with all dividends (including stock of the plaintiff corporation) and avails thereof and all right, title and interest therein.

(3) Judgment for the costs of this action.

SECOND COUNT

1-3. Plaintiff incorporates into and makes a part of this count the averments contained in the first, second and third paragraphs of the first count of this Complaint.

4. On and prior to February 15, 1943, and continuously thereafter, plaintiff was and is the owner of 176 shares of the Common A stock of *General Aniline & Film Corporation*, of a value in excess of Thirty-five Thousand Dollars ($35,000.00).

5. On February 15, 1943, Hon. James E. Markham, as Alien Property Custodian, and the predecessor of the defendant Clark in this action, issued his Vesting Order No. 907, whereby he illegally seized the aforesaid shares of stock and vested the same in himself as such Custodian.

6. That effective on, to-wit, October 15, 1946, by Executive Order No. 9788, the Office of Alien Property Custodian was terminated, and all authority, rights, privileges, powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be

administered by him, and all property and interests vested in and transferred to the Alien Property Custodian, or seized by him, and all proceeds thereof, were transferred to the Attorney General; and that, pursuant to said Executive Order, said shares are now in the possession of one of the defendants in this action, namely, Hon. Tom C. Clark, Attorney General of the United States, as the successor to the Alien Property Custodian, but they are held illegally by him.

7. That said shares of stock were seized and vested and are being held without warrant of law and in violation of the Constitution of the United States, and without the consent of the plaintiff.

8. On or about June 2, 1948, plaintiff duly filed with the defendant Clark a Notice of Claim under oath, with respect to the aforesaid shares of stock, in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

9. Defendant Clark is retaining the aforesaid shares of stock, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and they should be returned to the plaintiff as the sole owner thereof.

10. The defendant, William A. Julian, Treasurer of the United States, is sued as a defendant in this count by virtue of the provisions of Section 9(a) of the said Trading with the Enemy Act, because cash dividends which have been received by the defendant Clark and his predecessor Custodians upon the shares of stock described herein are on deposit with and in the possession of the defendant Julian in an account in the United States Treasury in the name of the defendant Clark, and are wrongfully and illegally held by the said defendant Julian.

WHEREFORE, plaintiff demands:

(1) Judgment that it is entitled to the return and immediate possession of the shares of stock described in the 4th paragraph hereof.

57 (2) Judgment that the defendants, respectively, account for and deliver and transfer said shares of stock to the plaintiff, together with all dividends (including stock of the plaintiff corporation) and avails thereof and all right, title and interest therein.

(3) Judgment for the costs of this action.

THIRD COUNT

1-3. Plaintiff incorporates into and makes a part of this count the averments contained in the first, second and third paragraphs of the first count of this Complaint.

4. On June 24, 1946, Hon. James E. Markham, as Alien Property Custodian, and the predecessor of the defendant Clark in this action, issued his Vesting Order No. 6718, whereby he illegally seized the sum of Nine Hundred Seventy-five Thousand, Two Hundred Forty-four Dollars and Seventy Cents ($975,244.70), comprising the aggregate of balances to the credit of four certain accounts in the name of and belonging to the plaintiff in the banks and for the amounts hereinafter more fully described, and the said Markham vested the same in himself as such Custodian. The names of said banks and the dollar balances to the credit of plaintiff's accounts therein are respectively stated as follows:

Bank of the Manhattan Co	$182,092.90
Irving Trust Co	186,302.08
Credit Suisse, New York Agency	288,669.07
Swiss Bank Corp., New York Agency	318,180.65
Total	$975,244.70

5. At all times on and prior to June 24, 1946, and continuously thereafter, plaintiff was and is the owner of the aforementioned moneys, funds and credits in said accounts and the only one entitled to the proceeds thereof.

6. That effective on, to-wit, October 15, 1946, by Executive Order No. 9788, the Office of Alien Property Custodian was terminated, and all authority, rights, privileges,

powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be adminstered by him, and all property and interests vested in and transferred to the Alien Property Custodian, or seized by him, and all proceeds thereof, were transferred to the Attorney General; and that, pursuant to said Executive Order, said sum of money is now held by one of the defendants in this action, namely, Hon. Tom C. Clark, Attorney General of the United States, as the successor to the Alien Property Custodian, and is deposited with and in the possession of the other defendant, William A. Julian, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant Clark, but is held illegally by both defendants. The defendant Julian, as Treasurer, is sued herein by virtue of the provisions of Section 9(a) of the Trading with the Enemy Act.

7. That said bank accounts and the moneys, funds and credits thereof were seized and vested and are being held without warrant of law and in violation of the Constitution of the United States, and without the consent of the plaintiff.

8. On or about June 2, 1948, plaintiff duly filed with the defendant Clark a Notice of Claim under oath, with respect to the aforesaid sum of Nine Hundred Seventy-five Thousand, Two Hundred Forty-four Dollars and Seventy Cents ($975,244.70), in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

9. Defendants are retaining the aforesaid sum of money, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and it should be returned to the plaintiff as the sole owner thereof.

WHEREFORE, plaintiff demands:

(1) Judgment that it is entitled to the return and immediate possession of the sum of Nine Hundred

Seventy-five Thousand, Two Hundred Forty-four Dollars and Seventy Cents ($975,244.70).

(2) Judgment that the defendants account for and deliver and pay over said sum of money to the plaintiff, together with all increment thereon, as well as interest upon said sum at the rate of six per centum (6%) per annum from June 24, 1946, and all right, title and interest therein.

(3) Judgment for the costs of this action.

FOURTH COUNT

1-3. Plaintiff incorporates into and makes a part of this count the averments contained in the first, second and third paragraphs of the first count of this Complaint.

4. On June 26, 1946, Hon. James E. Markham, as Alien Property Custodian, and the predecessor of the defendant Clark in this action, issued his Vesting Order No. 6767, whereby he illegally seized moneys, funds and credits in a certain account in the Bank of the Manhattan Company, New York City, N. Y., more fully described in said Vesting Order, and vested the same in himself as such Custodian. Plaintiff is informed and believes and therefore avers that the amount so seized and vested is not less than Three Hundred Eight Thousand, Seven Hundred Fifty Dollars ($308,750.00).

5. At all times on and prior to June 26, 1946, and continuously thereafter, plaintiff was and is the owner of the aforementioned moneys, funds and credits in said account and the only one entitled to the proceeds thereof.

6. That effective on, to-wit, October 15, 1946, by Executive Order No. 9788, the Office of Alien Property Custodian was terminated, and all authority, rights, privileges, powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be administered by him, and all property and interests vested in and transferred to the Alien Property Custodian, or seized by him, and all proceeds

thereof, were transferred to the Attorney General; and that, pursuant to said Executive Order, said sum of money is now held by one of the defendants in this action, namely, Hon. Tom C. Clark, Attorney General of the United States, as the successor to the Alien Property Custodian, and is deposited with and in the possession of the other defendant, William A. Julian, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant Clark, but is held illegally by both defendants. The defendant Julian, as Treasurer, is sued herein by virtue of the provisions of Section 9(a) of the Trading with the Enemy Act.

7. That the aforesaid moneys, funds and credits were seized and vested and are being held without warrant of law and in violation of the Constitution of the United States, and without the consent of the plaintiff.

8. On or about June 2, 1948, plaintiff duly filed with the defendant Clark a Notice of Claim under oath, with respect to the aforesaid sum of, to-wit, Three Hundred Eight Thousand, Seven Hundred Fifty Dollars ($308,750.00), in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

9. Defendants are retaining the aforesaid sum of money, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and it should be returned to the plaintiff as the sole owner thereof.

WHEREFORE, plaintiff demands:

(1) Judgment that it is entitled to the return and immediate possession of the sum of Three Hundred Eight Thousand, Seven Hundred Fifty Dollars ($308,750.00).

(2) Judgment that the defendants account for and deliver and pay over said sum of money to the plaintiff, together with all increment thereon, as well as interest upon said

sum at the rate of six per centum (6%) per annum
61 from June 26, 1946, and all right, title and interest therein.

(3) Judgment for the costs of this action.

FIFTH COUNT

1-3. Plaintiff incorporates into and makes a part of this count the averments contained in the first, second and third paragraphs of the first count of this Complaint.

4. On June 26, 1946, Hon. James E. Markham, as Alien Property Custodian, and the predecessor of the defendant Clark in this action, issued his Vesting Order No. 6768, whereby he illegally seized the sum of Four Hundred Two Thousand, Four Hundred Twelve Dollars and Fifty Cents ($402,412.50), comprising moneys, funds and credits in a certain account in The National City Bank of New York, New York City, N. Y., more fully described in said Vesting Order, and vested the same in himself as such Custodian.

5. At all times on and prior to June 26, 1946, and continuously thereafter, plaintiff was and is the owner of the aforementioned moneys, funds and credits in said account and the only one entitled to the proceeds thereof.

6. That, effective on, to-wit, October 15, 1946, by Executive Order No. 9788, the Office of Alien Property Custodian was terminated, and all authority, rights, privileges, powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be administered by him, and all property and interests vested in and transferred to the Alien Property Custodian, or seized by him, and all proceeds thereof, were transferred to the Attorney General; and that, pursuant to said Executive Order, said sum of money is now held by one of the defendants in this action, namely, Hon. Tom C. Clark, Attorney General of the United States, as the successor to the Alien Property Custodian, and is deposited with
62 and in the possession of the other defendant, William A. Julian, Treasurer of the United States, in an

account in the United States Treasury in the name of the defendant Clark, but is held illegally by both defendants. The defendant Julian, as Treasurer, is sued herein by virtue of the provisions of Section 9(a) of the Trading with the Enemy Act.

7. That the aforesaid moneys, funds and credits were seized and vested and are being held without warrant of law and in violation of the Constitution of the United States, and without the consent of the plaintiff.

8. On or about June 2, 1948, plaintiff duly filed with the defendant Clark a Notice of Claim under oath, with respect to the aforesaid sum of Four Hundred Two Thousand, Four Hundred Twelve Dollars and Fifty Cents ($402,412.50), in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

9. Defendants are retaining the aforesaid sum of money, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and it should be returned to the plaintiff as the sole owner thereof.

WHEREFORE, plaintiff demands:

(1) Judgment that it is entitled to the return and immediate possession of the sum of Four Hundred Two Thousand, Four Hundred Twelve Dollars and Fifty Cents ($402,412.50).

(2) Judgment that the defendants account for and deliver and pay over said sum of money to the plaintiff, together with all increment thereon, as well as interest upon said sum at the rate of six per centum (6%) per annum from June 26, 1946, and all right, title and interest therein.

(3) Judgment for the costs of this action.

63 SIXTH COUNT

1-3 Plaintiff incorporates into and makes a part of this count the averments contained in the first, second and third paragraphs of the first count of this Complaint.

4. On June 26, 1946, Hon. James E. Markham, as Alien Property Custodian, and the predecessor of the defendant Clark in this action, issued his Vesting Order No. 6769, whereby he illegally seized the sum of Forty-seven Thousand, One Hundred Twenty-five Dollars ($47,125.00), comprising moneys, funds and credits in a certain account in The National City Bank of New York, New York City, N. Y., more fully described in said Vesting Order, and vested the same in himself as such Custodian.

5. At all times on and prior to June 26, 1946, and continuously thereafter, plaintiff was and is the owner of the aforementioned moneys, funds and credits in said account and the only one entitled to the proceeds thereof.

6. That effective on, to-wit, October 15, 1946, by Executive Order No. 9788, the Office of Alien Property Custodian was terminated, and all authority, right, privileges, powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be administered by him, and all property and interests vested in and transferred to the Alien Property Custodian, or seized by him, and all proceeds thereof, were transferred to the Attorney General; and that, pursuant to said Executive Order, said sum of money is now held by one of the defendants in this action, namely, Hon. Tom C. Clark, Attorney General of the United States, as the successor to the Alien Property Custodian, and is deposited with and in the possession of the other defendant, William A. Julian, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant Clark, but is held illegally by both defendants. The defendant Julian,
64 as Treasurer, is sued herein by virtue of the provisions of Section 9(a) of the Trading with the Enemy Act.

7. That the aforesaid moneys, funds and credits were seized and vested and are being held without warrant of law and in violation of the Constitution of the United States, and without the consent of the plaintiff.

8. On or about June 2, 1948, plaintiff duly filed with the defendant Clark a Notice of Claim under oath, with respect to the aforesaid sum of Forty-seven Thousand, One Hundred Twenty-five Dollars ($47,125.00), in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

9. Defendants are retaining the aforesaid sum of money, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and it should be returned to the plaintiff as the sole owner thereof.

WHEREFORE, plaintiff demands:

(1) Judgment that it is entitled to the return and immediate possession of the sum of Forty-seven Thousand, One Hundred Twenty-five Dollars ($47,125.00).

(2) Judgment that the defendants account for and deliver and pay over said sum of money to the plaintiff, together with all increment thereon, as well as interest upon said sum at the rate of six per centum (6%) per annum from June 26, 1946, and all right, title and interest therein.

(3) Judgment for the costs of this action.

SEVENTH COUNT

1-3. Plaintiff incorporates into and makes a part of this count the averments contained in the first, second and third paragraphs of the first count of this Complaint.

65 4. On October 14, 1946, Hon. James E. Markham, as Alien Property Custodian, and the predecessor of the defendant Clark in this action, issued his Supplementary Vesting Order No. 7874, whereby he illegally undertook to seize and vest in himself as such Custodian the sum of One Hundred Eight Thousand, Seven Hundred Fifty Dollars ($108,750.00), comprising moneys, funds and credits in a certain account in the Chase National Bank of the City of New York, N. Y., more fully described in said Vesting Order.

5. That effective on, to-wit, October 15, 1946, by Executive Order No. 9788, the Office of Alien Property Custodian

was terminated, and all authority, rights, privileges, powers, duties and functions vested in said Office or Custodian, or transferred or delegated thereto, were vested in and transferred and delegated to the Attorney General, to be administered by him, and all property and interests vested in and transferred to the Alien Property Custodian, or seized by him, and all proceeds thereof, were transferred to the Attorney General.

6. On February 16, 1948, one of the defendants, namely, Hon. Tom C. Clark, Attorney General of the United States, as the successor to the Alien Property Custodian, issued an amendment to said Vesting Order No. 7874, and pursuant thereto and to the aforesaid Executive Order, the defendant Clark illegally seized the said sum of One Hundred Eight Thousand, Seven Hundred Fifty Dollars ($108,750.00), comprising the moneys, funds and credits described in paragraph 4 of this count and more fully described in said Vesting Order; and said sum of money is now held by the defendant Clark, and is deposited with and in the possession of the other defendant, William A. Julian, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant Clark, but is held wrongfully and illegally by both defendants. The defendant Julian, as Treasurer, is sued herein by virtue of the provisions of Section 9(a) of the Trading with the Enemy Act.

7. At all times on and prior to October 14, 1946, and continuously thereafter to the present date, plaintiff was and is the owner of the aforementioned moneys, funds and credits in said account and the only one entitled to the proceeds thereof.

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8. That the aforesaid moneys, funds and credits were seized and vested and are being held without warrant of law and in violation of the Constitution of the United States, and without the consent of the plaintiff.

9. On or about June 2, 1948, plaintiff duly filed with the defendant Clark a Notice of Claim under oath, with respect

to the aforesaid sum of One Hundred Eight Thousand, Seven Hundred Fifty Dollars ($108,750.00), in the form and containing the particulars required by the Alien Property Custodian or by the defendant Clark as his successor.

10. Defendants are retaining the aforesaid sum of money, owned by and belonging to the plaintiff, without warrant of law and in violation of the Constitution of the United States, and it should be returned to the plaintiff as the sole owner thereof.

WHEREFORE, plaintiff demands:

(1) Judgment that it is entitled to the return and immediate possession of the sum of One Hundred Eight Thousand, Seven Hundred Fifty Dollars ($108,750.00).

(2) Judgment that the defendants account for and deliver and pay over said sum of money to the plaintiff, together with all increment thereon, as well as interest upon said sum at the rate of six per centum (6%) per annum from October 14, 1946, and all right, title and interest therein.

(3) Judgment for the costs of this action.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A. (Also known as INTERNATIONALE INDUSTRIE- & HANDELSBETEILIGUNGEN A. G.); and formerly named INTERNATIONALE GESELLSCHAFT FUR CHEMISCHE UNTERNEHMUNGEN A. G. (I.G. CHEMIE), and SOCIETE INTERNATIONALE POUR ENTREPRISES CHIMIQUES S. A. (I. G. CHEMIE)
By JOHN J. WILSON, Its Attorney

(Filed Jan. 26, 1950)

68 **Answer Amended in Accordance with Orders of the Court.**

The defendants, J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and Georgia

Neese Clark, Treasurer of the United States, for their answer to the complaint herein:

Deny each and every allegation contained in the counts and paragraphs of the complaint (and not merely the allegations of paragraphs which are in their entirety expressly denied below), except those paragraphs or allegations as are hereinafter expressly, and not by implication, admitted.

With respect to the specific counts and paragraphs of the complaint, the defendants

FIRST COUNT

1. Admit that the action purports to be brought and the jurisdiction of the court is invoked under the Fifth Amendment to the Constitution of the United States and the Trading with the Enemy Act, as amended (U. S. Code, Title 50, Appendix, Section 1, *et seq.*), and particularly Section 9(a) thereof.

2. Admit, on information and belief, that the plaintiff is a corporation organized under the laws of Switzerland and that its name has been changed from Internationale
69 Gesellschaft für Chemische Unternehmungen A.G. (I.G. Chemie), and Societe Internationale pour Enterprises Chimiques S.A. (I.G. Chemie), to Societe Internationale pour Participations Industrielles et Commerciales S.A. and Internationale Industrie- & Handelsbeteiligungen A.G.; and it is now commonly sometimes called "Interhandel".

3. Deny the allegations of Paragraph 3.

4. Admit, on information and belief, that 2,050,000 shares of the Common B stock, and 455,448 shares of the Common A stock of General Aniline & Film Corporation may have a value in excess of One Hundred Million Dollars ($100,000,000.00).

5. Admit that on February 16, 1942, the Secretary of the Treasury executed and issued a Vesting Order whereby, *inter alia*, shares of General Aniline & Film Corporation of the description and number referred to in Paragraph 4, First Count, *supra*, were vested under the Trading with

the Enemy Act and Executive Orders and regulations issued thereunder. Said Vesting Order is filed with and published in the Federal Register (7 F.R. 1046). A certified copy thereof is attached hereto as Exhibit A and by this reference is incorporated herein.

Admit that on April 24, 1942, the Alien Property Custodian executed and issued Vesting Order No. 5, whereby the shares of stock of General Aniline & Film Corporation covered by the aforementioned Vesting Order issued by the Secretary of the Treasury on February 16, 1942, were vested, under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder. Said Vesting Order No. 5 is filed with and published in the Federal Register (7 F.R. 3148). A certified copy thereof is attached hereto as Exhibit B and by this reference is incorporated herein.

Admit that pursuant to said Vesting Order No. 5 the Secretary of the Treasury delivered, transferred and assigned to the Alien Property Custodian, *inter alia*, shares of stock of General Aniline & Film Corporation of the description and number referred to in Paragraph 4, First Count, *supra*.

6. Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F.R. 11981, error corrected 11 F.R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

Admit that pursuant to said Executive Order shares of stock of the General Aniline & Film Corporation of the description and number referred to in Paragraph 4, First Count, *supra*, and vested under the aforementioned Vesting Order of February 16, 1942, and under the aforementioned Vesting Order No. 5, were transferred to and are now in the possession of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian.

7. Admit that shares of stock of the description and number referred to in Paragraph 4, First Count, *supra*,

and vested under the Vesting Order of February 16, 1942 and under Vesting Order No. 5, were seized, vested and are being held without the consent of the plaintiff.

8. Admit that on or about February 1, 1943, the plaintiff filed with the then Office of Alien Property Custodian a document under oath, in the form required by the Alien Property Custodian, entitled "Notice of Claim for Return of Property" with respect to 455,448 shares of the A stock and 2,050,000 shares of the B stock of the General Aniline & Film Corporation and all dividends and increment on said shares, vested under Vesting Order No. 5.

Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the predecessor of the defendant J. Howard McGrath, entitled "Notice of Claim for Return of Property" with respect to the aforesaid stock, dividends and increment.

9. Deny the allegations of Paragraph 9.

71 10. Admit that plaintiff purports to sue the defendant Georgia Neese Clark, Treasurer of the United States, under Section 9(a) of the Trading with the Enemy Act, and that cash dividends received by the defendant J. Howard McGrath, Attorney General, as successor to the Alien property Custodian, and his predecessors as Alien Property Custodian on the shares of stock vested by Vesting Order No. 5 are on deposit with defendant Clark in an account in the United States Treasury in the name of J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian.

SECOND COUNT

1-3. The defendants repeat the allegations and denials of their answer made in Paragraphs 1 to 3, First Count, *supra*.

4. Admit, on information and belief, that 176 shares of the Common A stock of General Aniline & Film Corpora-

tion may have a value in excess of Thirty-five Thousand Dollars ($35,000.00).

5. Admit that on February 15, 1943, the Alien Property Custodian executed and issued Vesting Order No. 907, whereby, *inter alia*, 176 shares of the Common A stock of the General Aniline & Film Corporation were vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder. Said Vesting Order is filed with and published in the Federal Register (8 F.R. 2453). A certified copy thereof is attached hereto as Exhibit C and by this reference is incorporated herein.

6. Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F.R. 11981, error corrected 11 F.R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

Admit that pursuant to said Executive Order shares of stock of the description and number referred to in Paragraph 4, Second Count, *supra*, and vested under Vesting Order No. 907, were transferred to the predecessor of and are now in the possession of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian.

72 7. Admit that the shares of stock of the description and number referred to in Paragraph 4, Second Count, *supra*, and vested under Vesting Order No. 907, were seized, vested and are being held without the consent of the plaintiff.

8. Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the predecessor of the defendant J. Howard McGrath, entitled "Notice of Claim for Return of Property" with respect to 176 shares of the A stock of the General Aniline & Film Corporation and all dividends and increment on said shares, vested under Vesting Order No. 907.

9. Deny the allegations of Paragraph 9.

10. Admit that plaintiff purports to sue the defendant Georgia Neese Clark, Treasurer of the United States, under Section 9(a) of the Trading with the Enemy Act, and that cash dividends received by the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and his predecessors as Alien Property Custodian on the shares of stock vested by Vesting Order No. 907 are on deposit with defendant Clark in an account in the United States Treasury in the name of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian.

THIRD COUNT

1-3. The defendants repeat the allegations and denials of their answer made in Paragraphs 1 to 3, First Count, *supra*.

4. Admit that on June 24, 1946, the Alien Property Custodian executed and issued Vesting Order No. 6718 whereby certain debts or other obligations arising out of current accounts entitled "Internationale Gesellschaft fuer Chemische Unternehmungen A.G." at the Bank of the Manhattan Company, the Irving Trust Company, the Credit Suisse, New York Agency, and the Swiss Bank Corporation, New York Agency, were vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder, and that pursuant to said Vesting Order
73 the Alien Property Custodian was paid the sum of Nine Hundred Seventy-Four Thousand, Three Hundred Thirteen Dollars and Eighty-Seven Cents ($974,313.87). The sums received from said banks are respectively:

Bank of the Manhattan Company	$182,089.90
Irving Trust Company	186,300.08
Credit Suisse, New York Agency	288,179.07
Swiss Bank Corporation, New York Agency	317,744.82
	$974,313.87

Said Vesting Order No. 6718 is filed with and published in the Federal Register (11 F.R. 7643). A certified copy thereof is attached hereto as Exhibit D and by this reference is incorporated herein.

5. Deny the allegations of Paragraph 5.

6. Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F.R. 11981, error corrected 11 F.R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

Admit that pursuant to said Executive Order the aforementioned sum of money paid to the Alien Property Custodian pursuant to Vesting Order No. 6718 was transferred to the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and is on deposit with defendant Georgia Neese Clark, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant McGrath, as successor to the Alien Property Custodian.

Admit that the action purports to be brought against the defendant Clark, as Treasurer, under Section 9(a) of the Trading with the Enemy Act.

7. Admit that the aforementioned sum of money was seized, vested and is being held without the consent of the plaintiff.

8. Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the predecessor of the defendant, J. Howard McGrath, entitled "Notice of Claim for Return of Property" with respect to $975,244.70, alleged to have been vested under
74 Vesting Order No. 6718.

9. Deny the allegations of Paragraph 9.

FOURTH COUNT

1-3. The defendants repeat the allegations and denials of their answer made in paragraphs 1 to 3, First Count, *supra*.

4. Admit that on June 26, 1946 the Alien Property Custodian executed and issued Supplemental Vesting Order No. 6767, whereby a certain debt or other obligation arising out of a current account entitled "N. V. Maatschappij voor Industrie en Handelsbelangen" at the Bank of the Manhattan Company was vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder, and that pursuant to said Vesting Order the Alien Property Custodian was paid the sum of Two Hundred Forty-Two Thousand, Seven Hundred Thirty-Six Dollars and Nineteen Cents ($242,736.19).

Said Supplemental Vesting Order No. 6767 is filed with and published in the Federal Register (11 F.R. 7733). A certified copy thereof is attached hereto as Exhibit E and by this reference is incorporated herein.

5. Deny the allegations of Paragraph 5.

6. Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F.R. 11981, error corrected 11 F.R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

Admit that pursuant to said Executive Order the aforementioned sum of money paid to the Alien Property Custodian pursuant to Supplemental Vesting Order No. 6767, was transferred to the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and is on deposit with defendant Georgia Neese Clark, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant McGrath as successor to the Alien

75 Property Custodian.

Admit that the action purports to be brought against the defendant Clark, as Treasurer, under Section 9(a) of the Trading with the Enemy Act.

7. Admit that the aforementioned sum of money was seized, vested and is being held without the consent of the plaintiff.

8. Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the predecessor of the defendant J. Howard McGrath, entitled "Notice of Claim for Return of Property" with respect to $308,750.00, alleged to have been vested under Supplemental Vesting Order No. 6767.

9. Deny the allegations of Paragraph 9.

FIFTH COUNT

1-3. The defendants repeat the allegations and denials of their answer made in Paragraphs 1 to 3, First Count, *supra*.

4. Admit that on June 26, 1946, the Alien Property Custodian executed and issued Supplemental Vesting Order No. 6768, whereby a certain debt or other obligation of General Aniline & Film Corporation for the payment of which said Corporation deposited $402,412.50 with the National City Bank of New York, in a trust account at the said bank, entitled

> General Aniline & Film Corporation, in trust for the owners of 900,000 shares of Common B stock of General Aniline & Film Corporation, registered in the names of Chemo Maatschappij voor Chemische Ondernemingen, Amsterdam, Holland and N. V. Maatschappij voor Industrie en Handelsbelangen, Amsterdam, Holland.

was vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder; and that pursuant to said Vesting Order, the Alien Property Custodian was paid the sum of Four Hundred Two

Thousand, Four Hundred Twelve Dollars and Fifty Cents ($402,412.50).

76 Said Supplemental Vesting Order No. 6768 is filed with and published in the Federal Register (11 F.R. 7733). A certified copy thereof is attached hereto as Exhibit F and by this reference is incorporated herein.

5. Deny the allegations of Paragraph 5.

6. Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F.R. 11981, error corrected 11 F.R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

Admit that pursuant to said Executive Order the aforementioned sum of money paid to the Alien Property Custodian pursuant to Supplemental Vesting Order No. 6768, was transferred to the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and is on deposit with defendant Georgia Neese Clark, Treasurer of the United States, in an account in the United States Treasury in the name of the defendant McGrath, as successor to the Alien Property Custodian.

Admit that the action purports to be brought against the defendant Clark, as Treasurer, under Section 9(a) of the Trading with the Enemy Act.

7. Admit that the aforementioned sum of money was seized, vested, and is being held without the consent of the plaintiff.

8. Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the predecessor of the defendant J. Howard McGrath, entitled "Notice of Claim for Return of Property" with respect to $402,412.50, vested under Supplemental Vesting Order No. 6768.

9. Deny the allegations of Paragraph 9.

77 SIXTH COUNT

1-3. The defendants repeat the allegations and denials of their answer made in Paragraphs 1 to 3, First Count, *supra*.

4. Admit that on June 26, 1946, the Alien Property Custodian executed and issued Supplemental Vesting Order No. 6769 whereby a certain debt or other obligation of General Aniline & Film Corporation for the payment of which said Corporation deposited $47,125.00 with the National City Bank of New York in a trust account at the said bank, entitled "General Aniline & Film Corporation, in Trust for ultimate beneficiaries of 650,000 shares of Common B stock of General Aniline & Film Corporation registered in the name of L. D. Pickering & Co.", was vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder; and that pursuant to said Vesting Order the Alien Property Custodian was paid the sum of Forty-Seven Thousand, One Hundred Twenty-Five Dollars ($47,125.00).

Said Supplemental Vesting Order No. 6769 is filed with and published in the Federal Register (11 F.R. 7734). A certified copy thereof is attached hereto as Exhibit G and by this reference is incorporated herein.

5. Deny the allegations of Paragraph 5.

6. Admit that by virtue of Executive Order 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F.R. 11981, error corrected 11 F.R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

Admit that pursuant to said Executive Order the aforementioned sum of money paid to the Alien Property Custodian pursuant to Supplemental Vesting Order No. 6769, was transferred to the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, and is on deposit with defendant Georgia Neese Clark, Treasurer of the United States, in

an account in the United States Treasury in the name of the defendant McGrath, as successor to the Alien Property Custodian.

78 Admit that the action purports to be brought against the defendant Clark, as Treasurer, under Section 9(a) of the Trading with the Enemy Act.

7. Admit that the aforementioned sum of money was seized, vested and is being held without the consent of the plaintiff.

8. Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the predecessor of the defendant J. Howard McGrath, entitled "Notice of Claim for Return of Property" with respect to $47,125.00, vested under Supplemental Vesting Order No. 6769.

9. Deny the allegations of Paragraph 9.

SEVENTH COUNT

1-3. The defendants repeat the allegations and denials of their answer made in Paragraphs 1-3, First Count, *supra*.

4. Admit that on October 14, 1946, the Alien Property Custodian executed and issued Supplemental Vesting Order No. 7874, whereby

> An obligation in the amount of $108,750.00 owed by The Chase National Bank of the City of New York, 18 Pine Street, New York, New York, to Union Bank of Switzerland, Zurich, Switzerland, constituting a portion of an account entitled "Union Bank of Switzerland, Zurich, Switzerland", maintained at the aforesaid bank, together with any and all rights to demand, enforce and collect the same,

was vested under the Trading with the Enemy Act and Executive Orders and regulations issued thereunder.

Said Supplemental Vesting Order No. 7874 was filed with and published in the Federal Register (11 F.R. 13887). A

certified copy thereof is attached hereto as Exhibit H and by this reference is incorporated herein.

5. Admit that by virtue of Executive Order No. 9788, dated October 14, 1946, and effective October 15, 1946, filed with and published in the Federal Register (11 F.R. 11981, error corrected 11 F.R. 12123), the Office of Alien Property Custodian was terminated and the Attorney General became the successor to the Alien Property Custodian.

79 6. Admit that on February 16, 1948 the predecessor of J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, executed and issued an amendment to Vesting Order No. 7874, whereby the description of the property vested by Supplemental Vesting Order No. 7874 was amended to read:

> That certain debt or other obligation of the Chase National Bank of the City of New York, 18 Pine Street, New York, New York, in the amount of $108,750.00, arising out of an account entitled Union Bank of Switzerland, Blocked Germany and Switzerland, Zurich, Switzerland, maintained at foresaid The Chase National Bank of the City of New York, and any and all rights to demand, enforce and collect the same.

Said amendment to Vesting Order No. 7874 was filed with and published in the Federal Register (13 F.R. 1180). A certified copy thereof is attached hereto as Exhibit I and by this reference is incorporated herein.

Admit that pursuant to said Vesting Order No. 7874 and said amendment to Vesting Order No. 7874 the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, was paid the sum of One Hundred Eight Thousand, Seven Hundred Fifty Dollars ($108,750.00).

Admit that the said sum is on deposit with defendant Georgia Neese Clark, Treasurer of the United States, in an account in the United States Treasury, in the name of the defendant McGrath, as successor to the Alien Property Custodian.

Admit that the action purports to be brought against the defendant Clark, as Treasurer, under Section 9(a) of the Trading with the Enemy Act.

7. Deny the allegations of Paragraph 7.

8. Admit that the aforementioned sum of money was seized, vested and is being held without the consent of the plaintiff.

9. Admit that on or about June 2, 1948, the plaintiff filed with the predecessor of the defendant J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, a document under oath, in the form required by the predecessor of the defendant J. Howard McGrath, entitled "Notice of Claim for Return of Property", with respect to $108,750.00, vested by Vesting Order No. 7874, as amended.

10. Deny the allegations of Paragraph 10.

80 FIRST SEPARATE DEFENSE

1. Upon information and belief, the defendants allege that between about 1928, the exact date being unknown to the defendants, and the surrender of Germany in 1945, and thereafter to a time unknown to the defendants, the plaintiff engaged in and participated in a conspiracy or common plan, which had been in existence since about 1920, with I. G. Farben, Ed. Greutert et Cie., Basle, Switzerland (and its successor firm, H. Sturzenegger et Cie.), and others unknown to the plaintiff. Among the co-conspirators were the subsidiary, predecessor and controlled companies of the plaintiff, of I. G. Farben, of H. Sturzenegger et Cie., and the officers, directors, stockholders, agents, and representatives of the co-conspirators. The ultimate purpose and objective of said conspiracy or common plan was to conceal, camouflage and cloak the ownership, control, and domination by I. G. Farben of properties and interests in many countries of the world, including the United States, other than Germany. Among the various purposes and objectives of the said conspiracy were to assist I. G. Farben:

(a) To escape, avoid, or evade the tax laws of the German government;

(b) To escape, avoid or evade the tax laws, the laws aimed at foreign-owned property and other laws of the countries in which said properties and interests were located;

(c) To create and maintain reserves of properties and interests which could be realized in non-German, sound currencies;

(d) To avoid the effect of anti-German and anti-foreign sentiments, including boycotts of German and foreign-made goods, in the countries in which said properties and interests were located;

(e) To conceal, camouflage and cloak the ownership, control and domination by I. G. Farben of properties and interests located in countries, including the United States, other than Germany, in order to avoid seizure and confiscation in the event of war between such countries and Germany.

81 In the purposes and objectives stated under (d) and (e) above, the named conspirators conspired with the government of the German Reich.

2. To effectuate the said conspiracy or common plan, the named conspirators and others, deceased and unknown to the defendants, used divers plans, means, methods, acts and devices, including but not limited to, the following:

(a) Caused the plaintiff to be organized in the year 1928;

(b) Caused blocks of stock in the plaintiff to be issued to, transferred among, and held by corporations, partnerships, consortia and individuals owned, controlled or dominated by I. G. Farben;

(c) Caused General Aniline & Film Corporation (originally known as American I. G. Chemical Corporation) to be organized in the year 1929;

(d) Thereafter caused blocks of the stock of the General Aniline & Film Corporation to be issued to, transferred among, and held by corporations, partner-

ships, consortia and individuals owned, controlled or dominated by I. G. Farben;

(e) Caused corporations to be organized and stock to be issued to, transferred among, and held by the co-conspirators and others; caused the management, control and operation of corporations and partnerships to be entrusted to agents, representatives and associates of I. G. Farben and others responsible and loyal to I. G. Farben; caused, for these purposes, agreements to be made by and between the co-conspirators; caused loans and options to be given and taken with respect to the purchase and sale of stock, stock certificates to be secreted, applications to be made and favorably acted upon by the government of the German Reich; at various times unknown to the defendants and in details unknown to the defendants;

82 (f) Caused to be executed agreements and contracts affecting subsidiary, associate and independent corporations, partnerships, associations and individuals, with respect to sales, patents, patent licenses, technical experience, know-how and other matters for the purpose of retaining, holding and exercising control and domination by I. G. Farben of such subsidiary, associate and independent corporations, partnerships, associations and individuals, at various times unknown to the defendants and in details unknown to the defendants;

(g) Held meetings and discussions in Germany, Switzerland, the United States and other places unknown to the defendants, at various times unknown to the defendants and in details unknown to the defendants.

3. By reason of the foregoing, the plaintiff and the property claimed by the plaintiff are enemy and enemy tainted, and, therefore, the plaintiff has no standing to institute or maintain this action.

* * * * * * * * *

Filed April 13, 1950

130 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S.A., ETC. (I. G. CHEMIE),

Plaintiff,

v.

J. HOWARD MCGRATH, ET AL.,

Defendants,

REMINGTON RAND, INC.,

Intervenor Plaintiff,

ERIC G. KAUFMAN and AENNI C. KAUFMAN, individually and as general guardians of the persons and property of EMIL GERT KAUFMAN and RUTH MIRJAM KAUFMAN, and on behalf of all persons similarly situated,

Applicants for Intervention.

Civil Action No. 4360-48

Affidavit

DISTRICT OF COLUMBIA, SS:

Archer Henrick, being duly sworn, deposes and says:

I am the Records Officer of the Office of Alien Property, Department of Justice. As such Records Officer I have custody of the files of the Office of Alien Property, Department of Justice, including the files containing notices of claims filed with respect to vested property; that I have caused a diligent search to be made of the files of the Office of Alien Property, Department of Justice, for notices of claims filed by or on behalf of any claimants on the ground that claimants are or were stockholders of Societe Internationale Pour Participations Industrielles et Commerciales S.A., formerly named Internationale Gesellschaft Für Chemische Unternehmungen A. G. (I. G. Chemie), a corporation of Basle, Switzerland; and that as of this date

131 the only such claims filed with the Office of Alien Property, Department of Justice, are as follows:

No. 3741—Steven van Wezel, filed April 4, 1945, for General Aniline & Film Corporation stock equivalent to the value of 15 shares of I. G. Chemie.

No. 18127—Paul Lowenstein, filed August 27, 1947, for $4520 against I. G. Farbenindustrie for proceeds of forced sale including shares of I. G. Chemie, Basle, valued at sfrs. 4500.00.

No. 36736—Eric G. Kaufman and Aenni C. Kaufman and two minor children, filed June 15, 1948, as owners of 84 shares of I. G. Chemie for a proportionate share of stock of General Aniline & Film Corporation.

No. 501—General Aniline & Film Corporation, filed March 18, 1943, for $12,193,190.98 as owner of approximately 36.2% of the total paid-in common stock of I. G. Chemie.

All claims filed with the Office of Alien Property are open to public inspection.

Dated: April 11, 1950.

ARCHER HENRICK.

Sworn to before me this 11th day of April, 1950.

JOHN C. HILL,
Notary Public.

My commission expires the 30th day of Nov., 1951.

Filed May 24, 1950

147 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S.A., ETC., *Plaintiff*,

vs.

J. HOWARD MCGRATH, ET AL., *Defendants*,

ERIC G. KAUFMAN and AENNI C. KAUFMAN, individually and as general guardians of the persons and property of EMIL GERT KAUFMAN and RUTH MIRJAM KAUFMAN, and on behalf of all persons similarly situated, *Applicants for Intervention*.

Civil Action No. 4360-48

Memorandum Opinion

The present motion, filed by Eric G. Kaufman and Aenni C. Kaufman, seeks authority of the Court to intervene in these proceedings. These petitioners base their claim for intervention upon the fact that they are the owners of 86 shares of the capital stock of the plaintiff herein. Their status, according to their motion, is that they are not enemies, enemy nationals, allies of enemies or nationals of allies of enemies within the meaning of the "Trading With The Enemy Act". The petitioners claim that they desire to intervene not only on their own behalf but on behalf of all other persons similarly situated; i.e., stockholders of the plaintiff who, like the movants, are not now and have not been since December 6, 1941, enemies, etc. within the meaning of the "Trading With The Enemy Act".

A few days prior to the filing of their present motion, these same petitioners filed in the Southern District of New York a complaint against J. Howard McGrath, Attorney

General of the United States. In that complaint, petitioners, as owners of 86 shares of the capital stock of the plaintiff in the present action seek, under Section 9 of the "Trading With The Enemy Act" (50 USCA 9), to obtain a judicial declaration that they are entitled to the ownership, possession and enjoyment of their proportionate
148 share of the property and funds seized by the Alien Property Custodian from the plaintiff in the current action. No decision has yet been rendered in the case pending in the Southern District of New York.

Both the plaintiff and the defendant oppose the motion of the petitioners for leave to intervene herein, and the matter has been argued fully by counsel for the petitioners, as well as counsel for the plaintiff and the defendant.

There is a general practice in this and other Federal Courts to take a liberal view towards motions to intervene, upon the apparent assumption that no substantial harm results from the granting of such motions. It is apparently felt that if the intervenor does not have a substantial right or interest in the proceedings, the ultimate disposition of the case will eliminate him without injury to the principal parties. This Court feels, however, that petitions or motions to intervene should be carefully scrutinized and granted only in cases in which there is either a legal right to intervene or in cases in which the motion definitely establishes that the petitioner has some interest or right which will not be adequately protected or enforced unless intervention is granted.

In the present proceeding the Court has carefully studied the nature and status of the substantive case, not only as between the present plaintiff and defendant, but also insofar as it relates to the interests of the petitioners as stockholders in the plaintiff corporation. The memoranda of points and authorities, as well as counsels' arguments, devote considerable attention to the question of whether the parties seek to intervene in a representative or in a derivative capacity. Counsel have argued as to the applicability or non-applicability, depending upon their view-

points, of Rules 23 and 24 of the Federal Rules of Civil Procedure.

From all of the data and authorities cited to the Court, it is the Court's conclusion that the facts appear to establish that the petitioners' action is definitely upon a representative basis. Assuming that this conclusion is
149 correct, the Court rules that the petitioners have failed to establish their status in a representative capacity to intervene in this action. Appraising the pleadings and argument from a different viewpoint and assuming for the purpose of analysis that the petitioners seek to intervene upon a derivative basis, the Court finds that they are without legal status in this regard and not entitled to intervene.

The Court concludes that whether the petitioners predicate their motion to intervene either upon a representative or a derivative foundation, they are without proper status in either category to support their petition and, accordingly, the Motion to Intervene is denied.

Counsel will present appropriate Order.

EDWARD A. TAMM,
Judge.

Dated: May 24, 1950.

151 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., ETC.
Plaintiff

v.

J. HOWARD MCGRATH, ET AL.,
Defendants

REMINGTON RAND, INC.,
Intervenor.

ERIC G. KAUFMAN and AENNI C. KAUFMAN, individually and as general guardians of the persons and property of EMIL GERT KAUFMAN and RUTH MIRJAM KAUFMAN, and on behalf of all persons similarly situated
Applicants for Intervention

Civil Action No. 4360-48

Filed, May 26, 1950

Stipulation

It is hereby stipulated among the parties hereto that the benefits of settlement in this action shall be held by the corporation under the control of this Court for the benefit of its non-enemy stockholders as determined by this Court, after satisfaction of any corporate debts attributable thereto.

Dated at Washington, D. C., May 23rd, 1950.

.....
Attorney for Plaintiff

.....
Attorney for Defendants

WILLIAM RADNER,
Attorney for Applicants for Intervention

152 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., ETC.,
Plaintiff

v.

J. HOWARD MCGRATH, ET AL.,
Defendants

REMINGTON RAND, INC.,
Intervenor

ERIC G. KAUFMAN and AENNI C. KAUFMAN, individually and as general guardians of the persons and property of EMIL GERT KAUFMAN *and* RUTH MIRJAM KAUFMAN, and on behalf of all persons similarly situated,
Applicants for Intervention

Civil Action No. 4360-48

Filed, May 26, 1950

Stipulation

It is hereby stipulated among the parties hereto that the defendants herein may sell at public sale at any time the stock of General Aniline & Film Corporation without regard to the provisions of the Trading with the Enemy Act and that the proceeds of the sale shall instead be subject to the disposition of this action.

Dated at Washington, D. C., May 23rd, 1950.

.....
Attorney for Plaintiff

.....
Attorney for Defendants

WILLIAM RADNER,
Attorneys for Applicants for Intervention

153 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SOCIÉTÉ INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S. A., ETC. (I. G. CHEMIE),
Plaintiff

v.

J. HOWARD MCGRATH, ET AL.,
Defendants

REMINGTON RAND, INC.,
Intervenor

ERIC G. KAUFMAN and AE[illegible]I C. KAUFMAN, individually and as general guardians of the persons and property of EMIL GERT KAUFMAN and RUTH MIRJAM KAUFMAN, and on behalf of all stockholders of plaintiff similarly situated
Applicants for Intervention

Civil Action No. 4360-48

Filed, June 5, 1950

Consolidated Motion for Rehearing and to Alter or Amend Judgment Denying Motion for Leave to Intervene.

The applicants for intervention herein move the Court in the alternative as follows:

1. To vacate the judgment denying applicants' Motion for Leave to Intervene entered May 26, 1950, and for rehearing of such Motion on the grounds that:

(a) Neither in their opposing memoranda, affidavit nor oral argument, indeed nowhere in the proceedings thus far upon the Motion to Intervene have either plaintiff or defendants in any way challenged or questioned applicants' allegations that the settlement proposed will be for a sum far below the full and fair value of the properties involved and will be effected in such manner as to benefit enemy stockholders of plaintiff at the expense of non-enemy stock-

holders. These allegations have always been and are a principal basis of applicants' complaint herein, and
154 any denial of an opportunity to establish them would be a grave injustice to applicants and other non-enemy stockholders, under the Trading With the Enemy Act.

(b) The Court was in error in holding that applicants herein do not have "proper status" to present their claims in intervention in any capacity, because (1) applicants were stockholders of plaintiff at the time of all transactions complained of by them, (2) the action complained of impaired the rights of plaintiff and applicants under the Trading With the Enemy Act admitting, for the purpose of applicants' motion, the validity of the claims made, and (3) with respect to the claim of illegal settlement, the interests of applicants are so vitally affected that without regard to the question whether the intervention is representative, derivative, or otherwise, the applicants have "proper status" to assert and have the opportunity to establish the illegality claimed.

(c) The argument of defendants, adopted by plaintiff, that a stockholder's intervention can not be derivative unless for the benefit of all stockholders of the corporation was first made in a memorandum served at about 4 P.M. the day before the argument on the said motion. Applicants had insufficient opportunity to obtain reference to the numerous cases holding to the contrary, and the argument of defendants may have weighed heavily with the Court. Some of the leading cases so holding are as follows: *Brown* v. *De Young*, 167 Ill. 549, 47 N.E. 863 (1897); *Matthews* v. *Headley Chocolate Co.*, 130 Md. 523, 100 Atl. 645 (1917); *Backus* v. *Finkelstein*, 23 F. (2d) 357 (D. Minn. 1927), app. dismissed, 31 F. (2d) 1011 (CCA 8th, 1929); *Joyce* v. *Congdon*, 114 Wash. 239, 195 P. 29 (1921).

(d) From the Court's Memorandum Opinion in the above entitled matter, it would appear that the Court relied in some measure upon the pendency in the United States

District Court for the Southern District of New York of an action brought by intervenors Kaufman solely in their own behalf as individuals and in neither a derivative nor a representative capacity against one of the defendants herein to recover a proportionate share of the properties of
155 plaintiff corporation vested under the Trading With the Enemy Act. It would appear that in so doing the Court has failed to give proper consideration to the affidavit of plaintiff in the said action in the Southern District of New York which was filed in this proceeding to the effect that the sole purpose of said action in the Southern District of New York was to toll the statute of limitations in the event it should be ultimately determined in the principal action herein that the right to recover under Section 9(a) of the Trading With the Enemy Act is not that of the corporation but rather of its stockholders. Moreover, the Court has apparently failed to consider in that connection that it is the position of plaintiff and defendants in the principal action that the sole right to recover the properties here involved under the provisions of the Trading With the Enemy Act is in the plaintiff corporation.

(e) From the Court's Memorandum Opinion in the above entitled matter dated May 24, 1950, it would appear that the Court has not considered the applicability of Rule 24(a)(3) F.R.C.P., which permits intervention as of right "when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is . . . subject to the control or disposition of the court . . .", and which was relied upon by applicants equally with Rule 24(a)(2) F.R.C.P.

2. To alter or amend the judgment entered May 26, 1950 so as to grant applicants leave to file the Amended Motion for Leave to Intervene and Amended Proposed Complaint attached hereto, on the grounds that:

(a) It is not the purpose of the Federal Rules of Civil Procedure, as a general rule, to foreclose litigants such as applicants herein in the pleading stages of a case without

leave to amend, particularly where, as here, the principal action is not yet at issue and no substantial injury or inconvenience will be done to the other parties to the action. On the other hand, the grave injustice that may be done to applicants and other non-enemy stockholders of plaintiff by foreclosing them from establishing the claims asserted in the attached Amended Proposed Complaint has been shown above and is otherwise obvious. In any event, applicants are entitled as a matter of right to file the Amended Motion for Leave to Intervene, since no responsive pleading has as yet been filed.

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(b) To the extent that the Memorandum Opinion in this matter relied upon the failure of the original proposed complaint to make the allegation required for an original derivative action by the provisions of Rule 23 F.R.C.P., the first and second counts of the Amended Proposed Complaint contain those allegations in paragraphs 13 and 9, respectively. Applicants consider these allegations to be wholly superfluous on intervention under the provisions of Rule 24(a). Nevertheless, since an issue thereon was raised by plaintiff and defendants which does not go to the merits of applicants' claim, and since the facts are such that the necessary allegations can with all propriety be made by applicants, and since it appears that reference to Rule 23 is made in the Memorandum Opinion in this matter, applicants have complied with the requirements of Rule 23, without thereby waiving their right to assert the inapplicability of that rule.

(c) The Amended Proposed Complaint consists of three counts, the first and second counts being derivative and the third count being brought without regard to whether the nature of the claim is derivative, representative, or otherwise. The allegations and prayer of the original proposed complaint upon which plaintiff and defendants relied in arguing the applicants' failure to state a derivative action have been eliminated, and the Amended Proposed Complaint contains allegations sufficient to indicate unequi-

vocally—as indeed we believe did the allegations of the original complaint—that the claims therein asserted are on behalf of the corporation and for the benefit of the corporation insofar as it is entitled to the return of any property under the Trading With the Enemy Act. The first and second counts of the proposed complaint are based upon the law that an action, whether in intervention or otherwise, is no less derivative because certain shareholders of the corporation are ineligible in equity to share in the benefits thereof. The first count alleges a claim on behalf of the plaintiff corporation which the management of the corporation refuses to make. The second count alleges on behalf of the corporation that its management is about to
157 consummate an unlawful settlement at less than the full and fair value of the claim involved and to the detriment of the corporation, because of a conflict of interest as between the management and substantial segments of the corporation's stockholders. The third count is intended to point up the fact that without regard to the question as to the derivative or representative nature of the relief requested, applicants for intervention and other stockholders similarly situated will be irreparably injured by an impending illegal settlement between plaintiff and defendants herein and have no adequate remedy to redress such injury except by intervention in the principal action in this Court.

Although it is the position of applicants herein that these claims were inherent in its original proposed complaint, they have been separated and expanded in the light of the Memorandum Opinion of this Court above referred to in order to make it clearer that applicants are entitled as a matter of right to intervene herein. Particularly, the proposed pleading has been expanded to state specifically the reasons why applicants' interests are inadequately repre-

sented by the parties in the main action and especially the management of the plaintiff herein.

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158 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S.A., ETC.,
Plaintiff

v.

J. HOWARD MCGRATH, ET AL.,
Defendants

REMINGTON RAND, INC.,
Intervenor

ERIC G. KAUFMAN and AENNI C. KAUFMAN, individually and as general guardians of the persons and property of EMIL GERT KAUFMAN and RUTH MIRJAM KAUFMAN, and on behalf of all stockholders of the plaintiff similarly situated,

802 West 190th Street
New York 33, New York
Applicants for Intervention

Civil Action No. 4360-48

Amended Motion for Leave to Intervene

Eric G. Kaufman and Aenni C. Kaufman, hereinafter referred to as "applicants", move for leave to intervene as plaintiffs in this action, on their own behalf and on behalf of all stockholders of the plaintiff similarly situated, on the grounds that (1) applicants have a substantial interest in the subject matter of this action, the representation of their interest by the present parties to this action is inadequate, and applicants will be bound by a judgment in the action, and (2) applicants may be adversely affected by a distribution or other disposition of property subject to the control o disposition of the Court in this action. In support of this motion applicants represent as follows:

159 1. Applicants, individually and as general guardians of the persons and property of Emil Gert Kaufman and Ruth Mirjam Kaufman, are and at all times mentioned herein have been the sole and beneficial owners for value, of 86 shares of the capital stock of the plaintiff herein. Applicants are not now, and have not been at any time since December 6, 1941, enemies, enemy nationals, allies of enemies, nationals of allies of enemies, nationals of a designated enemy country, or nationals of Germany or Japan within the meaning of the Trading With the Enemy Act, as amended, and are not now and have not been since December 6, 1941, directly or indirectly controlled by or affiliated with I. G. Farbenindustrie, A.G., or any other enemy of the United States or national of Germany or Japan, all as more fully set forth in the first count of the verified pleading attached hereto.

2. On and prior to February 16, 1942, plaintiff was the owner of approximately 93 per cent of the capital stock of General Aniline & Film Corporation, a Delaware corporation, and certain other property in the United States which stock and property were vested by defendants' predecessors upon the finding that such property was beneficially owned or controlled by I. G. Farbenindustrie, A.G., an enemy of the United States, and defendants now hold the property so vested and other property subsequently received as dividends on the stock of General Aniline & Film Corporation, all as more fully set out in the first count of the verified pleading attached hereto.

3. The present action was brought by plaintiff corporation pursuant to Section 9(a) of the Trading With the Enemy Act, as amended, and the Fifth Amendment to the Constitution of the United States, to compel a return of the stock of General Aniline & Film Corporation, property distributed to defendants' predecessors as dividends on such stock, and other property of plaintiff so vested.

4. Applicants will be bound by the judgment in this action and will be adversely affected by a distribution or other

disposition of property in the custody or subject to the control or disposition of the Court in this action, if such distribution or disposition is made without consideration of applicants' interest therein.

160 5. The interests of the applicants are not adequately represented by any of the present parties to this action for the reasons set forth in full in the verified proposed pleading attached hereto.

6. Applicants present this application for intervention and proposed verified complaint attached hereto on behalf of the corporation in a derivative capacity, on their own behalf, and on behalf of all other stockholders of plaintiff similarly situated, in the first and second counts of said pleading, and on their own behalf and on behalf of said stockholders without regard to whether the nature of the claim is derivative, representative or otherwise, in the third count of said pleading. The interests of plaintiff and of such other stockholders are not adequately represented in this action for the reasons set forth in full in said proposed pleading, and will not be unless applicants are permitted to intervene herein.

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161 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S.A., ETC.,
Plaintiff

v.

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REMINGTON RAND, INC.,
Intervenor

ERIC G. KAUFMAN and AENNI C. KAUFMAN, individually and as general guardians of the persons and property of EMIL GERT KAUFMAN and RUTH MIRJAM KAUFMAN, and on behalf of all stockholders of plaintiff corporation similarly situated

802 West 190th Street
New York, New York
Intervenors

Civil Action
No. 4360-48

Amended Complaint in Intervention by Intervenors as Stockholders of Plaintiff Corporation to Assert a Claim of Plaintiff in a Derivative Capacity and to Prevent an Impending Settlement which Is Illegal under the Trading with the Enemy Act.

Intervenors above named, by leave of Court first had and obtained, file this, their complaint in intervention, for themselves and on behalf of all stockholders of plaintiff similarly situated, against the above named defendants, and say:

FIRST COUNT

1. The principal action and the action set forth in this complaint in intervention arise under the Fifth Amendment

to the Constitution of the United States and the Trading With the Enemy Act of October 6, 1916, as amended (U.S.C. Title 50, Appendix, Secs. 1-38).

2. Intervenors are residents of the City, County and State of New York and are now and have been at all times since December 6, 1941, non-enemies. The term "enemy" as used in this complaint means enemies, enemy nationals, allies of enemies, nationals of allies of enemies, nationals of a designated enemy country, or nationals of Germany or Japan, within the meaning of the Trading With the Enemy Act, as amended, and corporations or other persons directly or indirectly owned or controlled by or affiliated with an "enemy", and the term "non-enemy" means the absence of such status.

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3. Plaintiff is a corporation organized under the laws of the Confederation of Switzerland and has its principal office at Basle, Switzerland. Upon information and belief, plaintiff is and always has been a citizen of Switzerland, and has no principal office, place of business, or agent in the United States. Plaintiff is not now and has not been at any time since December 6, 1941, an enemy, at least to the extent that the plaintiff represents non-enemy interests, that is to say, at least to the extent plaintiff has been, since December 6, 1941, and is now owned by non-enemies.

4. On and prior to February 16, 1942, plaintiff was the owner of approximately 93 per cent of the capital stock of General Aniline & Film Corporation, a Delaware corporation, and of certain other property within the United States. On or about February 16, 1942, April 24, 1942, February 15, 1943, June 24, 1946, June 26, 1946, October 14, 1946 and February 16, 1948, defendants' predecessors issued certain vesting orders seizing the aforesaid property upon the finding that said property was beneficially owned or controlled by I. G. Farbenindustrie, A.G., an enemy of the United States. By reason of Executive Order No. 9788, effective October 15, 1946, predecessors of defendant McGrath received said stock and other property, including a substantial portion of the capital stock of plaintiff paid

as dividends on the stock of General Aniline & Film Corporation, and defendants now hold same, as more particularly alleged in the original complaint herein and as admitted in the answer of the defendants herein. The vested stock of General Aniline & Film Corporation has been valued, since the institution of the principal action, by plaintiff as in excess of $100,000,000, and by defendants variously as from $50,000,000 to in excess of $100,000,000.

5. Upon information and belief, plaintiff, within the time limited by law, filed claims with the Alien Property Custodian or predecessors of the defendant McGrath, or both, pursuant to the provisions of the Trading With the Enemy Act and after their denial filed the principal action
163 pursuant to Section 9(a) of the said Act and within the time limited by law. The theory of the complaint in the principal action is substantially identical with that advanced by the plaintiff in Uebersee Finanz-Korp. v. United States, 332 U.S. 480, and appears to have been patterned on that complaint. In essence, the complaint in the principal action alleges plaintiff is entitled to the return of all the property therein described because plaintiff at the time of vesting was a non-enemy entity. Although the complaint was filed October 21, 1948, the principal action is still not at issue. Defendants' amended answer (including counterclaims) was filed January 26, 1950, and plaintiff has not yet answered the counterclaims. While much time has been spent taking depositions, no pre-trial conference has yet been held concerning the issues of the principal action. Upon information and belief, the law of Switzerland would require plaintiff, upon receipt of any recovery of property or money in the principal action, by order of court, settlement or otherwise, to apply such recovery equally for the benefit of all its stockholders, without regard to their status as enemies or non-enemies and without regard to the policy of the United States as expressed in the Trading With the Enemy Act.

6. Intervenors herein allege on behalf of plaintiff that plaintiff is, under the Trading With the Enemy Act, entitled

to the return of that portion of the properties in issue herein, or of the proceeds of its sale at full and fair value, which is proportionate to the interests in plaintiff held by non-enemies, without regard to the disposition of any other portion of such properties, or the proceeds of any sale thereof, which defendants herein may be permitted to make under the provisions of the Trading With the Enemy Act or otherwise, such portion of the properties or the proceeds thereof to be returned to plaintiff for all proper corporate purposes, only excluding from the benefits thereof all interests ineligible to participate therein under the Trading With the Enemy Act.

7. Intervenors Kaufman, individually and as general guardians of the persons and property of Emil Gert Kaufman and Ruth Mirjam Kaufman, are, and at all times since December 6, 1941 and prior to the vesting orders referred to in paragraph 4 hereof have been, the sole and beneficial owners for value of eighty-six (86) shares of the
164 capital stock of plaintiff having a current market value of about $15,000 and having a substantially greater value if plaintiff's legal rights as herein stated are recognized. Upon information and belief, the non-enemy stockholders of plaintiff are, and at all times since December 6, 1941 and prior to the vesting orders referred to in paragraph 4 hereof have been, the sole and beneficial owners of not less than one-third of the outstanding stock of plaintiff, putting aside the stock presently in the hands of defendants herein, and formerly held by General Aniline & Film Corporation. The intervenors and other non-enemy stockholders of plaintiff are all eligible under the Trading With the Enemy Act to participate in the benefits of the return to plaintiff of any of the property involved in this proceeding.

8. Plaintiff has not made in the principal action the claim described in paragraph 6 above, and, on information and belief, plaintiff will not assert that or any similar claim in said action. On information and belief it is further alleged that in an effort to avoid the necessity of asserting

and pressing such claim, the ultimate determination of which may involve consideration of conflicting interests within plaintiff corporation, plaintiff proposes to settle the principal action on a lump-sum basis without regard to the merits of such claim and the conflicts within the corporation arising therefrom, all as more fully appears from the second count hereof.

9. Plaintiff, the intervenors and other non-enemy stockholders of plaintiff are not adequately represented by the management of plaintiff which controls and is conducting the principal action, because of the conflicting interests within plaintiff and the embarrassment of the present corporate management arising from the question whether it is enemy or non-enemy controlled. More specifically:

(a) It appears of record in the principal action that approximately 10.9 per cent of the shareholders of plaintiff were nationals of Germany, and therefore enemies, at the time the properties involved were vested. The assertion of the claim set forth in paragraph 6 involves the necessary consideration of excluding enemies from participation in the ultimate benefits of such claim. In view of the conflicting interests
165 within the plaintiff corporation, its management, which has a legal obligation to speak for plaintiff's enemy and non-enemy stockholders alike, is not qualified to raise and present issues which directly or indirectly result in disqualification of some of the stockholders of the corporation from participating in the benefits thereof.

(b) Upon information and belief, approximately 39 per cent of the voting stock of plaintiff was owned at the time the properties involved were vested and is still owned by a group of shareholders hereinafter referred to as the Sturzenegger Group. Upon information and belief, this Group has working control of the corporation and is responsible for the selection of its management. The United States Government, through the

Department of Justice, has asserted in this proceeding that plaintiff is a cloak for I. G. Farbenindustrie, the giant German chemical combine, because of I. G. Farbenindustrie's domination of the Sturzenegger Group. It is further asserted of record in the principal action by counsel for defendants that the Sturzenegger Group "owns and is I. G. Chemie"; that "It is our position, furthermore, that the private banking firm of G. Sturzenegger has been the dominant controller of this plaintiff for the purposes of I. G. Farben"; that "Sturzenegger is the leader of a group of corporations known as the Sturzenegger Complex and they own much and they own a predominating share in the plaintiff"; that "Hans Sturzenegger is the epitome of the plaintiff. He is—and this is our own term, it is our charge that he is the arch conspirator. He is the head of the tainted corporations, which are circular in nature and which own a large block of stock in the plaintiff. He dominates the plaintiff". If the Sturzenegger Group should be held to be enemy or enemy-tainted, the claim referred to in paragraph 6 above would disqualify such Group from participating in the proceeds of the ultimate recovery. Intervenors therefore allege that it is contrary to the interests of the Sturzenegger Group and of the management of plaintiff, to the extent such management represents the Group, to draw any distinction between enemy and non-enemy interests
166 in plaintiff of the nature set forth in paragraph 6 hereof.

(c) Plaintiff, through its counsel in open court, has disparaged and repudiated the basis of any claim as set forth in paragraph 6 hereof, stating that the same was "manufactured" for expediency, and has otherwise indicated that plaintiff does not have any intention of pressing such claim and, on the basis of statements in the record here, appears determined to press a claim based solely on a complaint which under substantially similar circumstances the Supreme Court of

the United States has construed to mean that "the property is free of all enemy taint and particularly that the corporations whose shares have been seized, the corporations which have a contract in which respondent has an interest, and respondent itself are companies in which no enemy, ally of an enemy, nor any national of either has an interest of any kind whatsoever, and that respondent has not done business in the territory of the enemy or any ally of an enemy", notwithstanding the fact that, even if the Sturzenegger Group is free of enemy taint, it is clear from the record in the principal action that approximately 10.9 per cent of the plaintiff's stockholders were German nationals and therefore enemies at the time the properties involved were vested.

Intervenors and all other non-enemy stockholders of plaintiff are, will, or may be bound by the judgment in the principal action.

10. Intervenors are so situated as to be adversely affected by a distribution or other disposition of the properties involved in the principal action, which properties are subject to the control or disposition of this Court.

11. Intervenors assert the claim contained in this first count on behalf of plaintiff in a derivative capacity, and on behalf of all non-enemy stockholders of plaintiff eligible under the Trading With the Enemy Act to participate in the benefits of the return to plaintiff of any of the properties involved in this proceeding.

167 12. The persons constituting the class of plaintiff's non-enemy stockholders eligible under the Trading With the Enemy Act to participate in the benefits of the return to plaintiff of any of the properties involved in this proceeding are so numerous as to make it impracticable to bring them all before this Court and the character of the right sought to be enforced for said class is common to all such persons.

13. Intervenors herein are now and were, at the time of the transaction of which they complain, shareholders of plaintiff. This claim in intervention is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction. The reasons intervenors have made no effort to secure from the managing directors or trustees of plaintiff such action as they desire are that such effort would be wholly futile and unavailing because the managing directors or trustees of plaintiff control and are conducting the principal action, because of the conflicting interests within the plaintiff, and because of the embarrassment of the managing directors or trustees of plaintiff arising from the question whether such managing directors or trustees are enemy or non-enemy controlled. More specifically:

(a) It appears of record in the principal action that approximately 10.9 per cent of the shareholders of plaintiff were nationals of Germany, and therefore enemies, at the time the properties involved were vested. The assertion of the claim set forth in paragraph 6 involves the necessary consideration of excluding enemies from participation in the ultimate benefits of such claim. In view of the conflicting interests within plaintiff corporation, its managing directors or trustees, which have a legal obligation to speak for plaintiff's enemy and non-enemy stockholders alike, are not qualified to raise and present issues which directly or indirectly result in disqualification of some of the stockholders of the corporation from participating in the benefits thereof.

(b) Upon information and belief, approximately 39 per cent of the voting stock of the plaintiff was owned at the time the properties involved were vested and is still owned by a group of shareholders hereinafter referred to as the Sturzenegger Group. Upon information and belief, this Group has working control
168 of the corporation and is responsible for the selection of its management. The United States

Government, through the Department of Justice, has asserted in this proceeding that plaintiff is a cloak for I. G. Farbenindustrie, the giant German chemical combine, because of I. G. Farbenindustrie's domination of the Sturzenegger Group. It is further asserted of record in the principal action by counsel for defendants that the Sturzenegger Group "owns and is I. G. Chemie"; that "It is our position, furthermore, that the private banking firm of G.Sturzenegger has been the dominant controller of this plaintiff for the purposes of I. G. Farben"; that "Sturzenegger is the leader of a group of corporations known as the Sturzenegger Complex and they own much and they own a predominating share in the plaintiff"; that "Hans Sturzenegger is the epitome of the plaintiff. He is—and this is our own term, it is our charge that he is the arch conspirator. He is the head of the tainted corporations, which are circular in nature and which own a large block of stock in the plaintiff. He dominates the plaintiff". If the Sturzenegger Group should be held to be enemy or enemy-tainted, the claim referred to in paragraph 6 above would disqualify such Group from participating in the proceeds of the ultimate recovery. Intervenors therefore allege that it is contrary to the interests of the Sturzenegger Group and of the managing directors or trustees of plaintiff, to the extent such managing directors or trustees represent the Group, to draw any distinction between enemy and non-enemy interests in plaintiff of the nature set forth in paragraph 6 hereof.

(c) Plaintiff, through its counsel in open court, has disparaged and repudiated the basis of any claim as set forth in paragraph 6 hereof, stating that the same was "manufactured" for expediency, and has otherwise indicated that the managing directors or trustees of plaintiff do not have any intention of pressing such claim and, on the basis of statements in the record here, appear determined to press a claim based solely on a complaint which under substan-

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tially similar circumstances the Supreme Court of the United States has construed to mean that "the property is free of all enemy taint and particularly that the corporations whose shares have been seized, the corporations which have a contract in which respondent has an interest, and respondent itself, are companies in which no enemy, ally of an enemy, nor any national of either has an interest of any kind whatsoever, and that respondent has not done business in the territory of the enemy or any ally of an enemy", notwithstanding the fact that, even if the Sturzenegger Group is free of enemy taint, it is clear from the record in the principal action that approximately 10.9 per cent of plaintiff's stockholders were German nationals, and therefore enemies, at the time the properties involved were vested.

(d) As hereinafter more specifically shown in the second count, plaintiff and defendants have been negotiating for a settlement of the principal action since October, 1949, the fact of such negotiations appearing of record in the principal action for the first time in the latter part of 1949. Upon information and belief, plaintiff and defendants intend to conclude a settlement of the principal action at an early date and accordingly, since plaintiff corporation is a Swiss corporation, not otherwise amenable to the jurisdiction of the courts of the United States, the assertion of the claim urged in paragraph 6 of the first count may be completely destroyed by settlement of the principal action prior to the time your intervenors could comply with the necessary formalities of seeking to secure from the managing directors or trustees of plaintiff corporation such action as they desire, and obtaining a refusal thereof by such managing directors or trustees.

(e) The action these intervenors desire the plaintiff corporation to take to enforce rights which may properly be asserted by it is completely within the control of the managing directors or trustees of the corporation and action by the shareholders of plaintiff is unneces-

sary to authorize the managing directors or
170 trustees to take such action. In any case, any request for such action by the stockholders would, on information and belief, be wholly futile and unavailing because the Sturzenegger Group has working control of the stock of the plaintiff.

14. There is no effective remedy adequate to protect intervenors and other non-enemy stockholders of plaintiff similarly situated except intervention herein. Unless intervention is granted intervenors and other non-enemy stockholders of plaintiff similarly situated will be irreparably injured.

SECOND COUNT

1. Intervenors for their second count herein make all of paragraphs 1, 2, 3, 4, 5, 6 and 7 of their first count, by reference, a part of this second count as completely as though such paragraphs were set out at length herein.

2. During the latter portion of 1949, plaintiff and defendants actively sought to effect a negotiated settlement of the principal action. A principal obstacle to effecting any such settlement was the pendency of the claim of the intervenor, Remington Rand, Inc., which claimed an option to purchase from plaintiff a portion of the vested property for the sum of approximately $25,000,000. The fact of such negotiations for settlement first appeared on the record of the principal action when, late in 1949 and during the progress of such negotiations, defendants, supported by plaintiff, moved this Court for an order adjudging that defendants and plaintiff are entitled to settle the principal action regardless of any right to the contrary asserted by the intervenor, Remington Rand, Inc. This Court denied that motion, and an appeal is now pending thereon to the Court of Appeals for the District of Columbia. Upon information and belief, plaintiff and defendants propose to settle the main action at an early date.

3. Upon a trial of the issues involved in Remington Rand, Inc.'s complaint in intervention, a judgment adverse to that intervenor was entered on April 26, 1950. Remington Rand, Inc. has as yet taken no appeal from that adverse judgment. Accordingly, that intervention at this time poses no obstacle to the settlement of the principal action by plaintiff and defendants.

4. Upon information and belief, the settlement contemplates payment by defendants to plaintiff of an amount far below the full and fair value of the property involved
171 in the principal action and far below the full and fair value of plaintiff's claims in that action because the negotiations for settlement do not take into account the claim described in paragraph 6 of the first count hereof. Moreover, such settlement is contrary to the purpose and intent of the Trading With the Enemy Act in that, upon information and belief, it fails to impose upon plaintiff the duty and obligation of allocating the benefits of such settlement first to its non-enemy shareholders, to the extent of their full interest in plaintiff. Consequently, and contrary to the Trading With the Enemy Act, the proposed settlement will permit enemy shareholders of plaintiff to benefit therein at the expense of non-enemy shareholders, both allied and neutral, notwithstanding the fact that enemy stockholders are ineligible to benefit from the recovery of assets vested by the United States in an action filed under Section 9(a) of the Trading With the Enemy Act.

5. Any such settlement as is set out in paragraph 4 of this count would be in violation of the Trading With the Enemy Act which, with certain exceptions immaterial here, makes it unlawful for enemies to benefit by the return of property previously vested by the United States under that Act. This Court sitting in Equity has a duty and responsibility under Section 9(a) of the Trading With the Enemy Act to supervise and control the ultimate disposition of property recovered from the United States, either by way of settlement or of final judgment in any action instituted under Section

9(a) to make certain that the benefits of the property returned are limited to those who are eligible under the Trading With the Enemy Act to receive such benefits. By attempting to effect a cash settlement of plaintiff's claim, as set out in paragraph 4 of this count, on a basis which would permit the immediate transfer of the cash proceeds of such settlement beyond the territorial jurisdiction of United States courts, plaintiff and defendants would deprive this court of its power to supervise and control the ultimate disposition of the proceeds of the settlement in such a manner as will preclude the receipt of benefits therefrom by enemy shareholders of plaintiff at the expense of the neutral and allied non-enemy shareholders.

6. The withdrawal of the proceeds of any settlement beyond the territorial jurisdiction of the United States courts would compel intervenors and all other non-enemy
172 stockholders of plaintiff similarly situated to resort to the courts of Switzerland for relief. The Swiss Compensation Office, an agency of the Swiss Government, has heretofore determined that plaintiff and the Sturzenegger Group are free of enemy taint. For this reason and for the reason that a Swiss court is not the proper institution to effectuate the war and foreign policies of the United States Government, an appeal to a Swiss court to enforce the provisions of the Trading With the Enemy Act and to allocate the benefits of a settlement between plaintiff and defendants to deprive enemy stockholders of the benefits therefrom at the expense of neutral and allied non-enemy stockholders will be, upon information and belief, futile and ineffectual, resulting in a stultification of the purposes and policies of the Trading With the Enemy Act and indeed a perversion of such purposes and policies by permitting enemies to benefit at the expense of non-enemies. Accordingly, the intervenors and other non-enemy shareholders of plaintiff have no adequate remedy except by intervention herein to prevent a settlement between plaintiff and defendants which is illegal under the Trading With the Enemy Act.

7. Plaintiff, the intervenors, and other non-enemy stockholders are not adequately represented by the management of plaintiff which controls and is conducting the principal action and the settlement being negotiated therein, because of the conflicting interests within plaintiff and the embarrassment of the present corporate management arising from the question whether it is enemy or non-enemy controlled. More specifically:

(a) It appears of record in the principal action that approximately 10.9 per cent of the shareholders of the plaintiff were nationals of Germany, and therefore enemies, at the time the properties involved were vested. For the reasons set out in paragraph 4 of this count, the proposed settlement involves the necessary consideration of excluding enemies from participation in the ultimate benefits of such a settlement. In view of the conflicting interests within plaintiff corporation, its management, which has a legal obligation to speak for plaintiff's enemy and non-enemy stockholders alike, is not qualified to negotiate a settlement which di-
173 rectly or indirectly results in disqualification of some of the stockholders of the corporation from participating in the benefits thereof.

(b) Upon information and belief, approximately 39 per cent of the voting stock of plaintiff was owned at the time the properties involved were vested and is still owned by a group of shareholders hereinafter referred to as the Sturzenegger Group. Upon information and belief, this Group has working control of the corporation and is responsible for the selection of its management. The United States Government, through the Department of Justice, has asserted in this proceeding that plaintiff is a cloak for I. G. Farbenindustrie, the giant German chemical combine, because of I. G. Farbenindustrie's domination of the Sturzenegger Group. It is further asserted of record in the principal action by counsel for defendants that the Sturzenegger Group

"owns and is I. G. Chemie"; that "It is our position, furthermore, that the private banking firm of G. Sturzenegger has been the dominant controller of this plaintiff for the purposes of I. G. Farben"; that "Sturzenegger is the leader of a group of corporations known as the Sturzenegger Complex and they own much and they own a predominating share in the plaintiff"; that "Hans Sturzenegger is the epitome of the plaintiff. He is—and this is our own term, it is our charge that he is the arch conspirator. He is the head of the tainted corporations, which are circular in nature and which own a large block of stock in the plaintiff. He dominates the plaintiff". Intervenors therefore allege that since it is the possible enemy status or enemy-taint of the Sturzenegger Group which in largest measure impels plaintiff corporation to effect a compromise of its claim, it is contrary to the interests of the Sturzenegger Group and the management of plaintiff corporation, to the extent such management represents the Group, to draw any distinction between enemy and non-enemy interests in plaintiff of the nature set forth in paragraph 6 of the first count hereof for the purpose of the settlement.

174 (c) Plaintiff, through its counsel in open court, has disparaged and repudiated the basis of any claim as set forth in paragraph 6 of the first count hereof, stating that the same was "manufactured" for expediency, and has otherwise indicated that the management of plaintiff does not have any intention of pressing such claim and, on the basis of statements in the record here, appears determined to press a claim based solely on a complaint which under substantially similar circumstances the Supreme Court of the United States has construed to mean that "the property is free of all enemy taint and particularly that the corporations whose shares have been seized, the corporations which have a contract in which respondent has an interest, and respondent itself, are companies in which no enemy, ally

of an enemy, nor any national of either has an interest of any kind whatsoever, and that respondent has not done business in the territory of the enemy or any ally of an enemy", notwithstanding the fact that, even if the Sturzenegger Group is free of enemy taint, it is clear from the record that approximately 10.9 per cent of the plaintiff's stockholders were German nationals, and therefore enemies, at the time the properties involved were vested.

(d) The management of plaintiff which controls and is conducting the principal action and which is negotiating the proposed settlement which is illegal under the Trading With the Enemy Act proposes, upon information and belief, to remove the proceeds of such settlement to Switzerland, beyond the jurisdiction of this Court.

Intervenors and all other non-enemy stockholders of plaintiff corporation are, will, or may be bound by the judgment in the principal action.

8. Intervenors are so situated as to be adversely affected by a distribution or other disposition of the properties involved in the principal action, which propertes are subject to the control of disposition of this Court, or by a distribution of the proceeds of such a settlement as described in this count, without supervision of this Court.

175 9. Intervenors assert the claim contained in this second count on behalf of plaintiff in a derivative capacity, and on behalf of all non-enemy stockholders of plaintiff eligible under the Trading With the Enemy Act to participate in the benefits of the return to plaintiff of any of the properties involved in this proceeding.

10. The persons constituting the class of non-enemy stockholders of plaintiff eligible under the Trading With the Enemy Act to participate in the benefits of the return to plaintiff of any of the properties involved in this proceeding are so numerous as to make it impracticable to bring them all

before this Court and the character of the right sought to be enforced for said class is common to all such persons.

11. Intervenors herein are now and were, at the time of the transaction of which they complain, shareholders of plaintiff. This claim in intervention is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction. The reasons intervenors have made no effort to secure from the managing directors or trustees of plaintiff such action as they desire are that such effort would be wholly futile and unavailing because the managing directors or trustees of plaintiff control and are conducting the principal action, because of the conflicting interests within the plaintiff, and because of the embarassment of the managing directors or trustees of plaintiff arising from the question whether such managing directors or trustees are enemy or non-enemy controlled. More specifically:

(a) It appears of record in the principal action that approximately 10.9 per cent of the shareholders of plaintiff were nationals of Germany, and therefore enemies, at the time the properties involved were vested. For the reasons set forth in paragraph 4 of this count, the proposed settlement involves the necessary consideration of excluding enemies from participation in the ultimate benefits of such a settlement. In view of the conflicting interests within plaintiff corporation, its managing directors or trustees, which have a
176 legal obligation to speak for plaintiff's enemy and non-enemy stockholders alike, are not qualified to negotiate a settlement which directly or indirectly results in disqualification of some of the stockholders of the corporation from participating in the benefits thereof.

(b) Upon information and belief, approximately 39 per cent of the voting stock of plaintiff was owned at the time the properties involved were vested and is still owned by a group of shareholders hereinafter referred

to as the Sturzenegger Group. Upon information and belief, this Group has working control of the corporation and is responsible for the selection of its management. The United States Government, through the Department of Justice, has asserted in this proceeding that plaintiff is a cloak for I. G. Farbenindustrie, the giant German chemical combine, because of I. G. Farbenindustrie's domination of the Sturzenegger Group. It is further asserted of record in the principal action by counsel for defendants that the Sturzenegger Group "owns and is I. G. Chemie"; that "It is our position, furthermore, that the private banking firm of G. Sturzenegger has been the dominant controller of this plaintiff for the purposes of I. G. Farben"; that "Sturzenegger is the leader of a group of corporations known as the Sturzenegger Complex and they own much and they own a predominating share in the plaintiff"; that "Hans Sturzenegger is the epitome of the plaintiff. He is—and this is our own term, it is our charge that he is the arch conspirator. He is the head of the tainted corporations, which are circular in nature and which own a large block of stock in the plaintiff. He dominates the plaintiff". Intervenors therefore allege that since it is the possible enemy status or enemy-taint of the Sturzenegger Group which in largest measure impels plaintiff corporation to effect a compromise of its claim, it is contrary to the interests of the Sturzenegger Group and of the managing directors or trustees of plaintiff, to the extent such managing directors or trustees represent the Group, to draw any distinction between enemy and non-enemy interests in plaintiff
177 of the nature set forth in paragraph 6 of the first count hereof for the purpose of the settlement.

(c) Plaintiff, through its counsel in open court, has disparaged and repudiated the basis of any claim as set forth in paragraph 6 of the first count hereof, stating that the same was "manufactured" for expediency,

and has otherwise indicated that the managing directors or trustees of plaintiff do not have any intention of pressing such claim and, on the basis of statements in the record here, appear determined to press a claim based solely on a complaint which under substantially similar circumstances the Supreme Court of the United States has construed to mean that "the property is free of all enemy taint and particularly that the corporations whose shares have been seized, the corporations which have a contract in which respondent has an interest, and respondent itself, are companies in which no enemy, ally of an enemy, nor any national of either has an interest of any kind whatsoever, and that respondent has not done business in the territory of the enemy or any ally of an enemy", notwithstanding the fact that, even if the Sturzenegger Group is free of enemy taint, it is clear from the record that approximately 10.9 per cent of the plaintiff's stockholders were German nationals, and therefore enemies, at the time the properties involved were vested.

(d) As in this count shown, plaintiff and defendants have been negotiating for a settlement of the principal action since October 1949, the fact of such negotiations appearing of record in the principal action for the first time in the latter part of 1949. Upon information and belief, plaintiff and defendants intend to conclude a settlement of the principal action at an early date, and accordingly, since plaintiff is a Swiss corporation not otherwise amenable to the jurisdiction of the courts of the United States, the assertion of the claim urged in paragraph 6 of the first count may be completely destroyed by settlement of the principal action prior to the time your intervenors could comply with the
178 necessary formalities of seeking to secure from the managing directors or trustees of plaintiff corporation such action as they desire, and obtaining a refusal thereof by such managing directors or trustees.

(e) The action these intervenors desire the plaintiff corporation to take to enforce rights which may properly be asserted by it is completely within the control of the managing directors or trustees of the corporation and action by the shareholders of plaintiff is unnecessary to authorize the managing directors or trustees to take such action. In any case, any request for such action by the stockholders would, on information and belief, be wholly futile and unavailing because the Sturzenegger Group has working control of the stock of the plaintiff.

THIRD COUNT

1. Intervenors for their third count herein make all of paragraphs 1, 2, 3, 4, 5, 6 and 7 of their first count and paragraphs 2, 3, 4, 5 and 6 of their second count, by reference, a part of this third count as completely as though such paragraphs were set out at length herein.

2. Intervenors and other non-enemy stockholders similarly situated are not adequately represented by the management of plaintiff which controls and is conducting the principal action and the settlement being negotiated therein, because that management is negotiating a settlement which is illegal under the Trading With the Enemy Act and upon information and belief proposes to remove the proceeds of such settlement to Switzerland, beyond the jurisdiction of this Court. Intervenors and all other non-enemy stockholders of plaintiff are, will, or may be bound by the judgment in or settlement of the principal action.

3. Intervenors are so situated as to be adversely affected by a distribution or other disposition of the properties involved in the principal action, which properties are subject to the control or disposition of this Court, or by a distribution of the proceeds of such a settlement as described in this count, without supervision of this Court.

4. Intervenors assert the claim contained in this third count, on behalf of themselves and other non-enemy share-

holders of plaintiff similarly situated, without regard to whether it may be categorized as representative, derivative, or otherwise.

179 5. The persons constituting the class of non-enemy stockholders of plaintiff eligible under the Trading With the Enemy Act to participate in the benefits of the return to plaintiff of any of the properties involved in this proceeding are so numerous as to make it impracticable to bring them all before this Court and the character of the right sought to be enforced for said class is common to all such persons.

WHEREFORE, these intervenors demand:

1. That this Court adjudicate and determine the rights of plaintiff to be as set forth in paragraph 6 of the first count of this complaint in intervention.

2. That this Court restrain and enjoin plaintiff and defendants from making any settlement of the principal action unless and until adequate provision is made for adjudication and determination by this Court of the claim as set forth in said paragraph 6.

3. That this Court order and direct plaintiff and defendants to pay the amount of any settlement which may be made into the registry of this Court pending presentation of a plan by the parties hereto whereby the amount of such settlement shall be applied first to the benefit of plaintiff's non-enemy shareholders, to the extent of their full interest in plaintiff, and pending ultimate determination as to the rights of those eligible to participate in the proceeds under the Trading With the Enemy Act.

4. That this Court retain control over all the properties involved or the proceeds of the sale thereof until plaintiff has given adequate assurance or security that such properties or proceeds will be handled by the corporation in strict accordance with the provisions of the Trading With the Enemy Act and such orders or directions as the Court may issue to enforce that enactment.

179 5. Such other and further relief as this Court may deem proper.

WILLIAM RADNER
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Washington 5, D. C.

ODELL KOMINERS
Tower Building
Washington 5, D. C.

HENRY G. FISCHER
Dupont Circle Building
Washington 6, D. C.

Attorneys for Intervenors

GRAUBARD AND MOSKOVITZ
115 Broadway
New York 6, New York
Of counsel

181 State of New York }
County of New York } *ss:*

AENNI C. KAUFMAN, being duly sworn, deposes and says that she resides at 802 West 190th Street, New York 33, New York, and that she is one of the intervenors in the foregoing complaint and knows the contents thereof and that the same are true of her own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters she believes them to be true.

AENNI C. KAUFMAN

Subscribed and sworn to before me, a Notary Public in and for the State and County of New York this 3rd day of June, 1950.

JESSE F. TOMPKINS,
Notary Public

182 Filed June 13, 1950

Affidavit

CITY OF ZURICH,
CANTON OF ZURICH,
CONFEDERATION OF SWITZERLAND } *ss:*

Hans Gut, being duly sworn, deposes and says:

I am a Director of Schoop, Reiff & Co. Aktiengesellschaft, a Swiss banking corporation, with offices at Pelikanstrasse 6, Zurich. I am authorized to make this affidavit on behalf of Schoop, Reiff & Co. Aktiengesellschaft in my capacity as Director of and also because I am in full charge of all matters pertaining to Interhandel A.G. and to the functions of Schoop, Reiff & Co. as protective committee for the *bona fide* non-enemy ordinary shareholders of Interhandel A.G.

I have, on behalf of certain clients of Schoop, Reiff & Co. Aktiengesellschaft, who have been and are *bona fide* non-enemy shareholders of Interhandel A.G., followed the progress of the litigation pending in the District of Columbia and it was decided between my clients and my company that it is necessary to organize a committee in order to protect the interests of the non-enemy ordinary shareholders of Interhandel A.G.. Accordingly Schoop, Reiff & Co. Aktiengesellschaft of which I am a Director consented to act as such protective committee. On May 16th, 1950, we caused an advertisement of that fact to be printed in several of the leading newspapers in Switzerland and invited interested parties to contact my company, Schoop, Reiff & Co. Aktiengesellschaft—as such protective committee—and to all interested persons we gave an Exposé dated May 16th, 1950, which we prepared, together with a form of authorization in which those shareholders who are willing, consented in writing that Schoop, Reiff & Co. shall act as protective committee on their behalf. The purpose of the committee was to obtain information concerning the progress of the litigation and of the reported negotiations for settlement on terms unknown to us, and the handling of corporate affairs, by the management of Interhandel A. G.; to make, if necessary, an intervention in the litigation presently pend-

183 ing in the District of Columbia and in general to preserve and protect the rights of *bona fide* non-enemy shareholders of Interhandel A. G. and also to see to it that if a settlement is made of the litigation in Washington, it should be made a fair and proper price with due regard for the interests of such *bona fide* non-enemy ordinary shareholders of Interhandel A. G..

In the original advertisement we fixed the date for signing of the authorizations as of May 31st. On June 2nd we caused a further advertisement to appear in the leading newspapers of Switzerland extending the time within which to file authorizations with Schoop, Reiff & Co. as protective committee until June 15th, 1950.

As of the close of business on June 8th, 1950, 94 persons owning 11'196 ordinary shares of Interhandel A.G. have executed a form of authorization authorizing and empowering Schoop, Reiff & Co. Aktiengesellschaft to act as protective committee for them, being *bona fide* non-enemy shareholders of Interhandel A.G., according to the terms there indicated; Schoop, Reiff & Co. itself owns twenty five shares of Interhandel A. G.. Each of the shareholders who has authorized the committee to act for him has already paid or has pledged himself to pay to Schoop, Reiff & Co. as protective committee the sum of ten Swiss francs per share to cover expenses of the committee and any counsel which it may appoint to represent it in accordance with its purposes.

I have received and read the papers pertaining to the motion for leave to intervene made by Erich G. Kaufmann and Aenni C. Kaufmann together with the proposed amended complaint which are entitled:

"Consolidated motion for rehearing and to alter or amend judgment denying motion for leave to intervene"

and

"Amended motion for leave to intervene"

and

"Amended complaint in intervention by intervenors as stockholders of plaintiff corporation to assert a claim of plaintiff in a derivative capacity and to prevent an impend-

ing settlement which is illegal under the Trading With the Enemy Act."

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and on behalf of myself and Schoop, Reiff & Co. Aktiengesellschaft as protective committee, hereby state and confirm that I am in agreement therewith and support the claims made therein and intend formally to become party to said intervention or to intervene independently in such manner as is deemed appropriate, at the earliest opportunity.

The interests of the *bona fide* non-enemy shareholders represented by Schoop, Reiff & Co. Aktiengesellschaft, as protective committee, are most substantial constituting as of the close of business on June 8th, 1950 a total of 11'196 shares which at the present market value quoted on the stock exchanges in Switzerland of 695 Swiss francs per share have a total value of 8.781.220 Swiss francs or approximately $1.805.400, and in my opinion and in the opinion of the protective committee, have a value of at least four times that amount if due recognition be given to their interests as non-enemy shareholders, in the vested assets in the United States.

HANS GUT.

Confederation of Switzerland
Canton and City of Zurich
Consulate General of the United States of America } *ss:*

Subscribed and sworn to before me,
ELEANOR R. BORROWDALE,
....., Vice Consul of the United States of America in and for the District of Zurich, duly commissioned and qualified, this 9th day of June, 1950.

ORIGINAL
Service No. 1632
Fee $2.00
Frs. 8.80

ELEANOR R. BORROWDALE,
Vice Consul of the United States of America at Zurich, Switzerland.

185 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SOCIETE INTERNATIONALE POUR PARTICIPATIONS ET COMMERCIALES S.A., ETC. (I.G. CHEMIE),

Plaintiff,

v.

J. HOWARD MCGRATH, ET AL.,

Defendants,

REMINGTON RAND INC.,

Intervenor Plaintiff.

Civil Action No. 4360-48.

Filed July 7, 1950

Stipulation Further Extending Time for Plaintiff to Reply to Second, Third, Fourth and Fifth Counterclaims.

It is hereby stipulated this 3rd day of July, 1950, that the plaintiff may have to and including August 1, 1950 within which to reply to the second, third, fourth and fifth counterclaims of the defendants.

JOHN J. WILSON,
Attorney for Plaintiff.

HAROLD I. BAYNTON,
Attorney for Defendants.

Approved this 7th day of July, 1950.

H. W. NEWENHAUT,
Judge.

186 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S.A., ETC. (I. G. CHEMIE),

Plaintiff,

v.

J. HOWARD MCGRATH, ET AL.,

Defendants;

REMINGTON RAND, INC.,

Intervenor,

ERIC C. KAUFMAN and AENNI C. KAUFMAN, individually and as general guardians of the persons and property of EMIL GERT KAUFMAN and RUTH MIRJAM KAUFMAN, and on behalf of all stockholders of plaintiff similarly situated,

Applicants for Intervention.

Civil Action No. 4360-48

Filed June 30, 1950

Order

Upon consideration of the motion of applicants Kaufman for a rehearing of their motion for leave to intervene, upon consideration of the motion to alter or amend the judgment entered May 26, 1950 so as to grant applicants leave to file the amended motion for leave to intervene, to which is attached as an exhibit a copy of a proposed amended com-

plaint, and further upon consideration of applicants' amended motion for leave to intervene, and after hearing the parties and upon all the papers filed on the original motion and filed herein, it is hereby

ORDERED:

1) That the motion for a rehearing is granted.

2) That applicants' motion to alter or amend the judgment entered May 26, 1950 so as to grant leave to file the amended motion for leave to intervene is granted.

3) The amended motion for leave to intervene is
187 deemed filed on June 5, 1950.

4) The amended motion for leave to intervene is denied.

Dated: June 30th, 1950.

EDWARD A. TAMM
Judge

SEEN:

JOHN J. WILSON
Counsel for Plaintiff

ODELL KOMINERS
Counsel for Applicants for Intervention

HAROLD I. BAYNTON
Counsel for Defendants

Excerpt From Transcript of Hearing Wednesday, June 14, 1950.

THE COURT: I have read them.

47 Fundamentally, there are two motions before the Court at the present time, one entitled "Consolidated motion for rehearing and to alter or amend judgment denying motion for leave to intervene," and, second, a motion to file an amended complaint which, in turn, asks for leave to intervene.

The Court has previously granted the first motion in so far as rehearing is concerned by the proceedings this morning. In reaching its decision on these motions the Court has given consideration to all of the elements, all of the points made by counsel for the plaintiff, for the defendant, and for the interveners, and if the Court omits in its enumeration any of the elements which counsel has
48 argued or statements in those points and authorities the omission is one of enumeration and not of consideration.

The Court has considered the probability of the applicability of the statute of limitations; it has considered the status and legal significance in this action presently being maintained by these petitioners; it has considered the provisions of the Trading With the Enemy Act as to who may sue in cases of this kind. I add, parenthetically, that there is a fine legal point raised as to whether these petitioners may bring an action in behalf of all non-alien stockholders in the light of the restrictions upon the right to bring an action within the provisions of the Trading With the Enemy Act, pointing out again that apparently that has not been adjudicated. The Court must consider further the Hornbook principle that a stockholder has no vested right in the property, in the particular property of a corporation. The Court must consider in this case that there is basically no allegation of fraudulent conduct alleged by the petitioners against these plaintiffs or defendants, only the charge that the settlement is not to the best interest of the petitioners. The Court considers the fact that the petitioners by their motion to intervene seek to obtain for themselves at least, and possibly for other non-alien stockholders, a preferential status in obtaining property of the corporation. The Court has considered the prob-
49 ability that the petitioners' action is not basically for the benefit of all of the stockholders, or perhaps for even a majority of the stockholders of the plaintiff corporation. The Court has considered the position of the plaintiff and the defendants in the principal action that

the sole right to recover involved under Trading With the Enemy Act is possibly in the plaintiff corporation.

The Court has considered carefully the provision of Rule 23 of the Federal Rules of Civil Procedure with reference to class actions. I have considered the provision of Rule 24 of the Civil Rules with reference to intervention, particularly Rule 24 (a), sub-section 3, upon which counsel for the petitioners has placed considerable emphasis, and various other factors that have been argued in the course of the presentations of these motions, and the predecessor motion which was the initial motion for leave on the part of these petitioners to intervene.

The Court believes that the petitioners have not established grounds justifying the Court to permit the motion to intervene, and the Court reaches its decision with the full knowledge that the trend of opinion is to permit persons who can show some color of right to proceed by intervention, but the Court cannot construe this as permitting every lawsuit to become virtually a free-for-all in which every person has some right to get into the action, without casting any reflection upon the motives of these petitioners, upon the theory "If we win, fine; if we don't get anything we have lost nothing."

The Court believes the rule relating to class actions should be strictly construed, even to those cases in which the petitioners for intervention can establish clearly to the satisfaction of the Court that they have a legal right to participate in the proceeding then pending.

Under the circumstances the Court must deny the petitioners' motion to alter and amend. The Court has granted the petitioners the right to file their amended complaint and denies their motion for leave to intervene.

188 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES, S.A., ETC. (I. G. CHEMIE), *Plaintiff*,

v.

J. HOWARD MCGRATH, ET AL., *Defendants*,

REMINGTON RAND, INC., *Intervenor*,

ERIC G. KAUFMAN and AENNI C. KAUFMAN, individually and as general guardians of the persons and property of EMIL GERT KAUFMAN and RUTH MIRJAM KAUFMAN, and on behalf of all stockholders of plaintiff similarly situated, *Applicants for Intervention*.

Civil Action No. 4360-48

Filed, July 11, 1950

Notice of Appeal

Notice is hereby given this 11th day of July, 1950, that Eric G. Kaufman and Aenni C. Kaufman, applicants for intervention in the above entitled action, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the judgment of this Court entered

on the 30th day of June, 1950, denying applicants' amended motion for leave to intervene.

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Washington 5, D. C.

HENRY G. FISCHER
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Attorneys for Applicants for Intervention.

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Plaintiff

HAROLD I. BAYNTON, ESQ.
DAVID SCHWARTZ, ESQ.
Dept. of Justice
Defendants

J. EDWARD BURROUGHS, JR.
1625 K St. N.W.
Intervenor

GRAUBARD AND MOSKOVITZ
115 Broadway
New York 6, New York
Of Counsel

[fol. 79] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10755

ERIC G. KAUFMAN and AENNI C. KAUFMAN, Appellants,

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A., etc.,

J. HOWARD MCGRATH, Attorney General of the United States, as successor to the Alien Property Custodian,

GEORGIA NEESE CLARK, Treasurer of the United States, and RMEINGTON RAND, INC., Appellees

Appeal from the United States District Court for the District of Columbia.

OPINION

Argued January 17, 1951. Decided April 5, 1951

Mr. William Radner, with whom *Messrs. Odell Kominers* and *Henry G. Fischer* were on the brief, for appellants.

Mr. John J. Wilson, with whom *Messrs. Roger J. Whitford, Philip S. Peyser*, and *Jo V. Morgan, Jr.*, were on the brief, for appellee Societe Internationale pour Participations Industrielles et Commerciales S. A., etc.

Mr. David Schwartz, Attorney, Department of Justice, with whom *Assistant Attorney General Harold I. Baynton* and *Messrs. George B. Searls* and *Sidney B. Jacoby*, Attorneys, Department of Justice, were on the brief, for appellees *J. Howard McGrath*, Attorney General of the United States, and *Georgia Neese Clark*, Treasurer of the United States.

Messrs. William P. MacCracken, Jr., Homer Cummings, J. Edward Burroughs, Jr., and Frank C. Sterck were on the brief for appellee Remington Rand, Inc.

Before Edgerton, Proctor, and Fahy, Circuit Judges

EDGERTON, Circuit Judge:

Societe Internationale (Interhandel) sued to recover property vested under the Trading with the Enemy

Act, 40 Stat. 411, as amended, 50 U. S. C. App. § 1 *et seq.* "Any person not an enemy or ally of enemy claiming any interest . . . in any money or other property which may have been conveyed . . . to the Alien Property [fol. 80] Custodian or seized by him hereunder and held by him or by the Treasurer of the United States" may "institute a suit in equity . . . to establish the interest . . . so claimed . . ." 50 U. S. C. App. § 9(a). Interhandel contends it owned the property, is a Swiss corporation, and is not an enemy or ally of enemy. The government contends Interhandel is enemy-owned and enemy-controlled.

Appellants are American citizens who own a few shares of stock in Interhandel. They undertook to intervene in its suit and appeal from an order denying intervention. They do not deny that much of Interhandel's stock is enemy-owned. But they contend that Interhandel has a claim, for the benefit of those of its stockholders who are not enemies, to the return of a share of the vested property proportionate to the interest of these stockholders in the corporation. They contend they are entitled to intervene to compel the corporation to assert this claim.

Rule 24(a) of the Federal Rules of Civil Procedure provides that anyone may intervene in an action ". . . (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court . . ." Clause (2) is inapplicable. Appellants will not "be bound by a judgment in the action" unless they are allowed to intervene. If they have a right to a share of the vested property they cannot be deprived of it in a suit to which they are not parties. Clause (3) is also inapplicable. "The law is well settled that one entitled to intervene as a matter of right under Rule 24(a)(3)FRCP 'must have an interest in the subject matter of the litigation of such a nature that he will gain or lose by the direct legal operation of the judgment.' *Pure Oil Co.* v. *Ross*, 170 F. (2d) 651 (CCA 7, 1948)." *Dowdy* v. *Hawfield*. U. S. App. D. C. , F. 2d ; No. 10475, decided March 1, 1951. "Clause (3) contemplates that the person having the right of inter-

vention should have a legal interest in the property in the custody of the court."[1] Appellants have no such interest. "The corporation is a person and its ownership is a non-conductor that makes it impossible to attribute an interest in its property to its members. *Donnell* v. *Herring-Hall-Marvin Safe Co.*, 208 U. S. 267, 273." *Klein* v. *Board of Supervisors*, 282 U. S. 19, 24. If this basic principle were disregarded in connection with clause (3) the result would be that any stockholder in any corporation could insist on intervening in any suit involving a claim of the corporation to specific property. Moreover, a corporation has "no 'standing vicariously' to assert the interest of its shareholders." *Silesian-American Corp.* v. *Clark*, 332 U. S. 469, 474.

Appellants have filed a suit in the United States District Court for the Southern District of New York to recover a proportionate share of the vested property. We express no opinion regarding that suit. We hold only that appellants have no valid claim to intervene in the corporation's suit.

Affirmed.

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[1] *United States* v. *Columbia Gas & Electric Corp.*, 27 F. Supp. 116 (D. C., D. Dela., 1939). *Cf. Radford Iron Co.* v. *Appalachian Electric Power Co.*, 62 F. 2d 940 (C. A. 4, 1933); *Cross* v. *Missouri & A. Ry. Co.*, 74 F. Supp. 242 (D. C., W. D. Ark., 1947); *In re Bender Body Co.*, 6 FRS 379 (D. C., N. D. Ohio, 1942).

[fol. 81] [File endorsement omitted]

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, APRIL TERM, 1951

No. 10,755

ERIC G. KAUFMAN, et al., Appellants,

vs.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES S. A., etc., et al., Appellees

Appeal from the United States District Court for the District of Columbia

Before Edgerton, Proctor and Fahy, Circuit Judges

JUDGMENT—Filed April 5, 1951

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the order of the said District Court denying appellants' amended motion for leave to intervene in this cause be, and the same is hereby, affirmed, with costs of appellees Societe Internationale pour Participations Industrielles et Commerciales S. A., etc., and Remington Rand, Inc., to be borne by appellants.

Per Circuit Judge Edgerton.

Dated April 5, 1951.

[fol. 82] [Designation of Record omitted in printing.]

[fol. 83] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, OCTOBER TERM, 1950

[Title omitted]

COUNTER-DESIGNATION OF RECORD—Filed June 2, 1951

The Clerk will please include in the certified transcript of record for use by the Appellants on petition to the Supreme Court of the United States for writ of certiorari in the above entitled cause, the following documents:

1. Copy of Appellants' New York complaint, reproduced at pages 31-34 of the appendix of this Appellee's brief.

John J. Wilson, 815 15th Street, N. W., Washington, D. C., Attorney for Appellee Societe Internationale, etc.

[fol. 84] [Certificate of Service omitted in printing.]

[fol. 85] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION No. 56-246

ARNNI C. KAUFMAN and ERIC G. KAUFMAN, individually and as general guardians of the persons and property of EMIL GERT KAUFMAN and RUTH MIRJAM KAUFMAN, Plaintiffs,

against

J. HOWARD MCGRATH, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, Defendant

COMPLAINT

To the Judges of the United States District Court, for the Southern District of New York:

Plaintiffs, complaining of the defendant herein, allege:

1. Plaintiffs are citizens of the United States and residents of the City, County and State of New York, and this

action arises under, and plaintiffs bring this action pursuant to, the provisions of Section 9 of the "Trading With the Enemy Act", 40 Stat. 411, 419, as amended, 50 U. S. C. App., Section 99.

2. Defendant, J. Howard McGrath, is a citizen of the United States and is the duly appointed and qualified Attorney General of the United States of America.

[fol. 86] 3. Plaintiffs are, and have been at all times since prior to December 7, 1941, and prior to the Vesting Orders referred to in Paragraph 4 hereof, the sole and beneficial owners for value, of eighty-six (86) shares of the capital stock of Internationale Gesellschaft Fur Chemische Unternehmungen, A. G., a corporation organized and existing under the laws of Switzerland, commonly known as, and hereinafter called, "I. G. Chemie". Upon information and belief, the name of said corporation has been changed to Internationale Industrie & Handelsbeteiligungen, A. G., also known as "Interhandel, A. G."

4. On February 16, 1942, the Secretary of the Treasury vested a substantial majority of the capital stock of General Aniline and Film Corporation, the owner of which stock was I. G. Chemie. Thereafter the Alien Property Custodian on April 29, 1942, by Vesting Order No. 5, vested again *inter alia*, this same stock, upon a finding that the real owner of the stock was I. G. Farbenindustrie, A. G., a German corporation. By several successive Vesting Orders the Alien Property Custodian similarly vested certain other assets of I. G. Chemie upon substantially the same finding. The defendant has duly succeeded to the functions, powers and duties of the Alien Property Custodian and the aforesaid assets are now vested in the defendant.

5. Upon information and belief, I. G. Chemie has filed claims with the Alien Property Custodian or the defendant, or both, pursuant to the provisions of the "Trading With the Enemy Act", as amended, and an action has been brought by I. G. Chemie pursuant to Section 9 of said Act, which is now pending in the United States District Court for the District of Columbia against defendant.

6. Pursuant to the order of the Secretary of the Treasury dated February 16, 1942, plaintiffs on March 28, 1942, filed a claim with the Secretary of the Treasury for the return of their interest in the vested property. No affirma-

[fol. 87] tive action was taken thereon to the knowledge of plaintiffs. On or before November 16, 1943, plaintiffs filed with the Alien Property Custodian a notice of claim for the aforesaid property and funds, or their interest therein; at the request of defendant, plaintiffs on or before June 15, 1948, refiled said claim with defendant; on or about October 12, 1949, the Hearing Examiner of the Office of Alien Property of defendant denied the aforementioned claims.

7. Plaintiffs herein duly applied for review of said action of the Hearing Examiner and an order dated December 15, 1949, denying said petition for review was served upon plaintiffs by letter dated December 16, 1949.

8. Plaintiffs have exhausted their administrative remedies.

9. Plaintiffs are not now and have not been at any time since prior to December 7, 1941, enemies, enemy nationals, allies of enemies or nationals of allies of enemies, or nationals of Germany or Japan, within the meaning of the "Trading With the Enemy Act."

10. Plaintiffs, as shareholders of I. G. Chemie, later known as Interhandel, A. G., are entitled to their full proportionate share of the property vested in the defendant as aforesaid, or to the proceeds of any sale thereof for fair and full value by defendant, notwithstanding that Interhandel, A. G., by reason of alleged enemy interest or otherwise, may fail to obtain the return of said vested property or may effect a settlement with defendant for some amount less than the fair and true value of the aforesaid vested property.

11. Plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray:

(1) That a summons be issued out of this Court directed to said J. Howard McGrath, Attorney General of the United States, demanding him on a day certain to appear [fol. 88] and answer to this bill of complaint and obey and perform said orders and decrees as to the Court may seem proper.

(2) That a decree be entered adjudging that, as between plaintiffs and defendant, plaintiffs are entitled to the ownership, possession and enjoyment of their proportionate

share of the property and funds seized by the Alien Property Custodian as hereinbefore alleged.

(3) That a decree be made directing said defendant to pay, convey, transfer, assign and deliver to plaintiffs the aforesaid proportionate share.

(4) That this Court grant such other, further and different relief as to the Court may seem equitable, just and proper.

Graubard & Moskovitz, by (S.) Seymour Graubard, a Member of the Firm, Attorneys for Plaintiffs, Office and P. O. Address: 115 Broadway, New York 6, N. Y.

Dated: March 9th, 1950.

[fols. 89-90] Clerk's Certificate to foregoing transcript omitted in printing.

Clerk's Certificate to foregoing supplemental transcript omitted in printing.

[fol. 91] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 15, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Clark took no part in the consideration or decision of this application.